UNITED STATES CIRCUIT COURT

SOUTHERN DISTRICT OF OHIO,

APRIL TERM, 1868.

No. 1107.

BELL AND GRANT, Pl'ffs.,

vs.

THE OHIO LIFE INSURANCE AND TRUST COMPANY, and Others, Def'ts.

POINTS, ABSTRACT AND ARGUMENT FOR DEFENDANTS,

By WORTHINGTON & MATTHEWS, Att'ys.

UNITED STATES CIRCUIT COURT.

SOUTHERN DISTRICT OF OHIO.

BELL AND GRANT, COMPLAINANTS,

v.

THE OHIO LIFE INSURANCE AND TRUST COMPANY AND OTHERS, DEFENDANTS.

} CHANCERY.

POINTS FOR DEFENDANTS.

I. Those who deal with corporations or their agencies, are held to know the powers of such corporations and such agencies.

7 Eng. Law and Equi. Rep. 508.
16 Eng. Law and Equi. Rep. 182.
30 Eng. Law and Equi. Rep. 137, 145.
21 Howard Rep. 441.
11 Ohio State Rep. 192.
19 Illinois Rep. 456.
31 Penn. State Rep. 461.
30 Vermont Rep. 599.

II. The charter of The Ohio Life Insurance and Trust Company, being a public law, is known to all the world. The powers it gives to its managers, whether trustees, directors or officers, were known

to the complainants. So, also, the powers given by its managers to its agencies, must be held to be known by those who deal with such agencies, and hence the complainants are chargeable with notice of the powers given to the agencies with which they operated.

21 Howard Rep. 441.
11 Ohio State Rep. 191, 192.

III. The rules, regulations and affairs of this Company being subject to the supervision of the Supreme Court of Ohio, the managers of said Company had good right to presume all its rules and regulations in relation to its business and agencies satisfactory, unless disapproved by said Court, and directed to be altered.

Sec. 20, 21, 22 of Charter.

IV. All acts of its managers or agencies in contravention of the powers conferred by its charter or its by-laws, rules or regulations, are fraudulent, and of no obligation, and not enforceable.

39 Eng. Law and Equi. Rep. 28.
21 Howard Rep. 441.
11 Ohio State Rep. 192.

V. All who participate in or contribute in any way to such frauds, whether by acts of commission or omission, are entitled to no favor in a Court of Equity.

11 Ohio State Rep. 338.
9 Ohio State Rep. 487.
8 Ohio State Rep. 570.
6 Ohio State Rep. 105.
20 New York Rep. 65.

VI. No one is entitled to be relieved from a loss that has resulted from his own misconduct or negligence.

3 Ohio State Rep. 172.
18 New York Rep. 422.
25 Barbour Rep. 600.
30 Penn. State Rep. 454
27 Barbour Rep. 221.

VII. If the claim of the complainants has arisen from dealings with the Company's agency in New York in direct violation of the rules and regulations for the management of that agency, then, the complainants, and that agency, are in *pari delicto*, and they have no *status* whatever in a Court of Equity.

VIII. If the complainants' loss has resulted from their own misconduct or negligence, or if they have contributed in any way to that loss, they can not be relieved in a Court of Equity.

IX. The Trustees of The Ohio Life Insurance and Trust Company are not liable for mere errors of judgment, there must be something more.

Ang. & Ames on Corp. sec. 314.
1 Edwards Chan. Rep. 513.
1 Rhode Island Rep. 312.
1 Strobh Chy. Rep. 170
11 Alabama Rep. 191.
4 Johr. Chy. 628.
3 Louisiana Rep. 568.

XI. The trustees of The Ohio Life Insurance and Trust Company, like the directors in all other corporations, are liable only for *mala fides*, or such gross neglect as will amount to *mala fides*.

1 Edward Ch'y Rep. 84, 513.
3 Paige " " 231.
5 " " " 607.
3 Edward " " 215.
2 John. " " 389.
4 " " " 628.

4 B. Monroe Rep. 195.
7 " " 557.
18 Ohio " 509.
3 Atk. " 480.
1 Vesey, Jr. " 41.
3 " " 565.
5 " " 144.
3 Louisiana " 568.

XII. By gross neglect, we mean "the omission of tha care which even inattentive and thoughtless men never fail to take of their own property."

20 Howard Rep. 367.

XIII. The director or trustee of a corporation can not be required to use more care than is required of the purchaser of negotiable paper, which is limited to *mala fides*, or negligence so gross as to amount to *mala fides*.

20 Howard Rep. 343.

The true test of liability is fidelity
to the only assumed
1 Sheets Chy Rep 171

There is a difference between fidelity
and a mistake
1 Sheets Chy Rep 172

XIV. The managers of a corporation can confide in each other, and trust each other, in the execution of the powers that devolve upon them.

18 Ohio Rep. 509.

XV. The managers of a corporation, if guilty of malfeasance or gross negligence in the administration of its affairs, are severally and not jointly liable for their misdeeds.

3 Wend. Rep. 130.
4 Denio " 301.
4 B. Monroe Rep. 178.
7 " " 359.
5 Paige Ch'y " 612.
Tiffany & Bullard on Trusts, 569.

XVI. The trustees of The Ohio Life Insurance and Trust Company, by reason of their office, were not excluded from dealing with the corporation consistent with its rules. As individuals they could deal with the Company as other individuals, except so far as restrained by its charter.

9 Paige Ch'y Rep. 650, 663.
11 " " " 118.
4 Cowen " 736, 737.
7 Hill " 260.

XVII. If the managers of a corporation, in the selection of persons to fill subordinate situations, select those of known bad character to them, they are liable; but if they select them without any knowledge of such unworthiness, then they are not liable; and having made such selections in good faith, they may confide in them.

Ang. & Ames on Corp. sec. 314.
1 Edward Ch'y Rep. 513.
7 Beavan Rep. 176.
11 Louisiana Rep. 41.
6 Watts " 185.
1 Sexton (N. J.) Rep. 268.

XVIII. Where frauds have been committed by subordinate officers with corporate funds, the managers, who have participated in such frauds, or suffered them by gross negligence, are liable.

3 Louisiana Rep. 568.
11 " " 41.
1 Rhode Island Rep. 312.

11 Maine Rep. 12.
1 Stockton Ch'y " 507.
1 Edward " " 513.
3 Paige " " 231.

XIX.—Where money has been paid under a clear and palpable mistake of either law or fact, or both, essentially bearing upon and affecting or superinducing the payment, without cause or consideration, and which, in law, honor and conscience, was not due and payable, and which, in honor, morality and good conscience, ought not to be retained, it may be recovered back.

4 B. Monroe Rep. 190.
3 " " 513.
4 Dana " 309.

XX.—Where a party claims to recover from another indemnity for willful fraud or gross neglect of duty, he must show by his pleadings, and establish by his proof, that the loss was occasioned by specific acts of fraud or negligence, and that he

was without fault, and in nowise a contributor thereto.

XXI.—The corporate powers of The Ohio Life Insurance and Trust Company were to be exercised by a board of trustees, and such officers and agents as they might appoint. The board of trustees to consist of twenty persons, all stockholders and citizens of the United States, and not less than three fourths citizens of Ohio. They were to establish and keep an agency in each judicial circuit in the State without banking powers, annually elect a president from their own body, and declare by by-law what number of trustees, less than a majority of the whole, should be a quorum to transact business.

Section 8 of Charter.

XXII.—No loans to be made to a trustee beyond $20,000, secured as in other cases. In addition, he could

receive $5,000 of his capital stock as required by section 7 of charter.

Section 17 of Charter.

XXIII.—Certificates of stock and moneys in trust, assignable on the books of the corporation, kept at such place and under such regulations as the board of trustees should establish; but no alteration in such regulations so established, unless by order of the Supreme Court, made on a petition of a majority of the trustees.

Section 18 of Charter.

XXIV.—The trustees had discretionary powers of investing the premium and profits received by the company, and the moneys received by them in trust, in government or other public stocks of the United States, or of any State, or in the stock of any incorporated city, or in such real or personal securities as they might deem proper, or loan the same to any county, city, incorporated town or company;

but the said Company not to hold the stock of any private incorporated company beyond $25,000.

Section 19 of Charter.

XXV.—For all losses of money which the capital stock shall not be sufficient to satisfy, the trustees shall be responsible, in the same manner and to the same extent that trustees are now by law responsible in law or equity.

Section 24 of Charter.

XXVI.—The charter not to be construed to confer any rights or powers to make any contract, or to accept or exercise any trust, which it would be unlawful for any individual, when not restrained by statute, under the general rules of law, which are or shall be in force, to make, accept or execute.

Section 26 of Charter.

XXVII.—The trustees, on first Monday in January and July, annually, to declare dividends from net profits, so as not to impair or in any wise lessen the capital stock, and cause the same to be paid, on demand, to the stockholders.

Section 27 of Charter.

XXVIII. The officers of the Company consist of a president, secretary, cashier, solicitor, and such other subordinates, agents, clerks, and assistants, as the board of trustees shall from time to time appoint.

By-Law 2.

XXIX. The president has the general superintendence of the affairs of the Company; presides at all meetings of the trustees, is a member *ex-officio* of all standing committees, and attends the meetings of all special committees when required. In all cases where the duties of subordinate officers and agents

of the Company are not specially prescribed by the by-laws, rules or resolutions of the board, they shall obey the instructions of the president.

By-Law 5.

XXX. The cashier shall carefully observe the conduct of all persons employed under him, and report to the board all such instances of neglect, incapacity, or bad conduct, as he may discover in any of them; daily to examine the settlement of the cash account of his department, take charge of the cash, and whenever the actual amount materially disagrees with the cash account, to report the same without delay to the president and trustees; to lay before them on every account day a general statement of the accounts of his department; attend all meetings of the board held on business relating to his department, give such information as may be required, and keep a record of the proceedings of such meetings, and perform such other services as may be required of him by the board.

By-Law 7.

XXXI. There shall be a stated meeting of the trustees on the first Tuesday in every month, to which a report shall be made by the president, of the concerns and business of the Company during the past month; stating particularly the contracts that have been made, the sums of money received, on what account and on what time, the manner in which the same or any moneys previously on hand have been invested, and the amount then remaining on hand.

By-Law 8.

XXXII. Six trustees shall be a sufficient number to form a quorum for the transaction of ordinary business.

By-Law 9.

XXXIII. The secretary and cashier shall each make out a statement of the business and condition of his

department, and a statement of the profits and losses which have accrued during the six months next preceding the making such statement, and furnish the same to the committee of finance, at least ten days before the day of declaring a dividend of the profits of the Company semi-annually; and the ocmmittee of finance shall, after ascertaining the correctness of such statements, make a full report thereon to the board, in which they shall set forth distinctly the profits (and losses if any) of each department and branch thereof, with the suspended debt, together with the opinion of the amount which it is expedient to divide.

By-Law 19.

XXXIV. The Ohio Life Insurance and Trust Company had power:—4. To receive money in trust, and to accumulate the same at such rate of interest as may be obtained or agreed on, or to allow such interest thereon as may be agreed on. 5. To accept and execute all such trusts of every description, as may be committed to them by any person or persons whatsoever, or may be transferred by order of any Court of Record whatever. 7. To buy and sell drafts and bills of exchange.

Section 2, of Charter.

XXXV. Where a trustee acts by other hands, either from necessity, or conformably to the common usage of mankind, he is not to be made answerable for losses.

2 Story's Equity, sec. 1269.
Ambler Rep. 219.
6 Vesey jr. Rep. 226.
1 Cane's Cases, 96.
4 John. Rep. 23.
Tiffany & Bullard's Law of Trusts, 573.

CASE MADE BY THE PLEADINGS.

I. BILL filed Oct. 16, 1858. 1. It avers complainants obtained a judgment against The Ohio Life Insurance and Trust Company for $259,293 50 damages, with costs, which remains in full force except as to about $22,493 42. Execution thereon has been returned no goods nor lands. 2. It avers the suspension of said Company on August 24, 1857, and afterward the assignment ordered Sept. 15, 1857, and made Sept. 26, 1857. 3. It avers the Company was insolvent and had not property to pay its liabilities, and a deficit of about $1,250,000. 4. It avers this loss was caused "by the gross negligence and want of ordinary care" of the trustees, naming them and their places of residence, and consisting among other delinquencies and breaches of duty not named in the following particulars, to-wit:

I. In failing to make examinations of the condition of such Company as required by its by-laws and rules.

II. In making advances to railroad companies and individuals in large sums upon insufficient security, and in modes and upon terms contrary to the charter, by-laws and rules of the Company.

III. In declaring dividends without proper examination of the condition of the Company, after its capital was greatly impaired by losses, and thereby diminishing the funds to pay creditors.

IV. In failing to hold monthly meetings as provided in the 8th section of the by-laws.

V. In allowing Edwin C. Ludlow, cashier of said Company in New York, to borrow money for said Company unlimited in amounts, and at such rates of interest, time and other conditions as said Ludlow might determine; to pledge the notes, bills, stocks and other choses of said Company as collateral security for such loans; to deal in stocks and to buy and sell the same on account of the Company; to purchase and sell the stock of said Company for its account; to make discounts and loans of the money of the Company in unlimited amount, and transact the business of receiving deposits, purchasing and selling bills of exchange, loaning and borrowing money and transacting all other banking business, which the Company was authorized to transact, on its account, without the intervention or supervision of said trustees, by means of which transactions on the part of said Ludlow, immense losses were sustained, which the complainants say they are informed the assignees state to be upward of $3,000,000.

VI. That the trustees neglected to exercise due control and supervision over said Ludlow, and to make regular and proper examinations of his accounts and transactions, and in consequence of such neglect said Ludlow was allowed to proceed in the disastrous course he was engaged in until the suspension; whereas, if they had properly discharged their duty in that regard, this loss, through these transactions, would not have happened, or would have been arrested at an early date, and before it reached any considerable amount; and which acts and omissions were contrary to their duties, the charter, by-laws and rules of the Company, which are exhibited as part of the bill.

VII. It avers the first suspension was on August 24, 1857, at the New York office, and, upon notice by tele-

graph, on same day, at the Cincinnati office. Thereon the trustees, contrary to their duties and trusts, paid certain creditors in full by the assignment of notes, etc., and in this way disposed of about $4,000,000 of said assets, and so continued till the date of the assignment.

VIII. It avers it was the duty of the trustees, upon the suspension, to hold all said assets for equal distribution, at least until it was clear the assets were ample to pay creditors in full, instead of which they made said partial distribution in total and acknowledged ignorance of the true condition of the assets and liability of the Company, to the great loss and prejudice of the complainants and other creditors, whose claims were left unpaid.

IX. It avers, during the time between suspension and assignment, it was the general and notorious report and belief the assets of the Company would not pay its liabilities, and consequently the claims against the Company fell greatly below par, ranging from 80 to 45 per cent. discount. During this time the trustees, or most of them, bought the claims at various rates of discount, and applied the same, under the sanction of the trustees, to pay their debts at par.

X. It avers this system of favoritism was kept up as long as the trustees could avoid an assignment, so much so, that though the order for the assignment was made Sept. 15, 1857, it was not made till Sept. 26, 1857, and was so deferred to allow the trustees and their friends to pay off their debts and receive their claims.

XI. It avers the bill is not for their sole account, but equally for other creditors, who will come to their aid.

XII. It avers, finally, they can not use the corporate name of the Company, because the trustees, etc., are au-

thorized to use it only. It prays the defendants be served with process, answers, etc. It, then, prays the trustees be decreed to account for their management of the affairs of said company, and to pay to and indemnify the plaintiffs, and other creditors, for all losses they have sustained by reason of the said default of said trustees.

II. Answer of Charles Stetson, Abraham M. Taylor, John C. Wright, Samuel J. Broadwell, George Crawford, Samuel B. Keys, George T. Stedman, Charles G. Enyart, Sylvester C. Parkhurst, Samuel Fosdick, George Luckey, Clement Dietrich and Samuel Forrer, filed Oct. 9, 1859.

I. They admit they are trustees and stockholders, and say they have faithfully discharged their duties as trustees, without compensation, and deny that they have been negligent. On the contrary, they have acted with good faith and honest purposes, and the charges in the bill to the contrary are untrue.

II. They admit they have been informed of the judgment, as stated in the bill, but say it was on claims against the Company at the New York agency, growing out of dealing with Ludlow, cashier, without their knowledge and contrary to the instructions for the management of said agency, and without the scope of the powers given to said cashier, and also without the knowledge of the trustees of the Company in New York, as they are advised and believe. They know nothing of the execution on said judgment, nor of the return thereon.

III. They admit the suspension in New York on 24th August, 1857, and in Cincinnati on the next day after consultation, and afterward the assignment, as per copy A, attached to bill. When the assignment was made they did

not know, nor believe the Company to be insolvent, and it was not ordered on that account, but the difficulties, etc., then thrown in their way in adjusting the affairs of the Company.

IV. They say the suspension of the Company, and its losses were not caused by their gross negligence, but arose from other causes not foreseen, and of which they had no knowledge, and in which they did not participate, and which they could not prevent. They acted at all times in good faith, and used due care in selecting officers, and had no reason to question their fidelity, nor that of each other or their other co-trustees, and hence in good faith confided in the integrity of said officers and trustees. They deny they were delinquent in the performance of their duties, or that they failed to make the proper examinations into the condition of the Company, as required by the by-laws. They deny loans to railroads or individuals with their knowledge or consent in large sums upon insufficient security, contrary to the charter and by-laws. On the contrary, in all loans, etc., they acted in good faith, believing the security ample, and their acts within the charter and by-laws, and all charges to the contrary are untrue. They deny they ever declared a dividend, without the proper examinations, and in all cases only declared them in good faith, after the proper examinations, from surplus profits, after leaving a fair surplus over all reasonable contingencies, and the charges to the contrary are untrue. They deny they failed to hold monthly, or other meetings as required by the charter and by-laws. The trustees in Cincinnati devoted much of their time to the affairs of the Company, almost daily, and as much as they could be expected to give, acting without compensation, and having

their own affairs to attend to; and having placed the affairs of the Company in the hands of trust-worthy men, as they believed and charge, save only one, to-wit, the said Ludlow, at the agency in New York, in whom it seems they were greatly deceived, though he had long been in the employ of the Company at New York, familiar with its business, and the instructions for its administration; well recommended, and by his industry, attention and good reputation, had brought himself generally into favor; and of his delinquencies they had no knowledge nor information, nor suspicion until after the suspension in August, 1857. They deny they allowed or suffered the said Ludlow, cashier, as charged in said bill, to borrow money unlimited in amounts, etc., as he pleased, or to pledge the the notes, bills, stocks, and other shares of the Company as security, or to deal in stocks for the Company, or in its stocks, or to make loans and discounts in unlimited amounts, or to receive deposits, buy and sell bills, loan and borrow money, and transact all the other banking business of said Company, without the supervision of the trustees. All such charges are untrue. They say the New York agency was established in the month of 1838, under special written instructions, within the competency of the Company, and not inconsistent with the laws of New York; and State of Ohio, from 1839 to 24th August, 1857, recognized and sanctioned said agency, by transactions with it in payment of the State debt, and sale and transfer of her stocks, and in using said agency as a depository; and all modifications in the business of said agency were under written instructions from time to time. The New York agency was also placed under the supervision of the New York trustees, who, as they believe, understood the confi-

dence reposed in them, and in the duties assigned them acted in good faith, and were in nowise complicated with said Ludlow in violating his instructions.

V. They had no reason to believe Ludlow faithless, until a few days before the suspension, when a letter from Mr. Coe, trustee in New York, gave information the New York office was in trouble and needed the presence of the president, who immediately repaired to New York, and on his arrival on 24th August, 1857, found the agency in such a condition as to be compelled to close its doors, and recommended the same thing to be done at Cincinnati. In April, 1857, the New York agency was examined by two trustees, Messrs. Coe and Stedman, and found in good condition, and they so reported to home office. The defendants confided in this report, which was made in good faith. From that time until about 21st August, 1857, they had no reason to suppose any wrong in the New York office, and then, from Mr. Coe's advices were led to believe there was only some temporary embarrassment; whereas, the president, Mr. Stetson, found it, on his arrival, in great confusion, and so embarrassed, he could form no just opinion of its condition, and had to close its doors and recommended the like course at Cincinnati. Mr. Stetson says, at that time he did not know or suppose the Company insolvent, and he did not so report to the trustees at Cincinnati.

VI. They say the losses of the Company arose from no negligence on their part, but mainly from the mismanagement of the New York agency under the control of said Ludlow, without the knowledge of the defendants, their co-trustees, or any of them.

VII. They say, from the various transactions of the Company, it is true the instructions to the New York

agency and communications were not always strictly guarded in language, nor could they be so; yet, if taken in connection with prior instructions, they could not be misconstrued. All such communications were given with an honest purpose, and just regard for the limitations on said agency, and their proper application could not be misunderstood, and it was bad faith to pervert them to uses not intended.

VIII. They say they did not neglect to exercise over said Ludlow, at said agency, due control, nor to make proper examination of his transactions, and it was not by reason thereof that he proceeded as he did. They say every reasonable precaution was used to keep said agency within its sphere. It was under the special charge of the New York trustees, some of whom were daily in said agency, and even transacted their business there. It was examined from time to time by said trustees, and the cashier was required to consult with them, and act under their advice within his instructions, and to make regular reports of short dates to the home office. This was generally done, and when omitted was believed a casualty. In fact, all due precautions were taken, but Ludlow deceived his New York advisers, and made false reports to the home office, and in this way covered up his short-comings, and threw the trustees off their guard, and led them to believe all was right, when the reverse was the case.

IX.—They say it is true they suspended as before stated. Upon it they took counsel. They did not believe the Company insolvent, and hoped the New York agency could be relieved. The Company had to pay its debts, and counsel advised debtors to the Company could pay it in claims upon it, and this right of set-off

could not be impaired; hence, they, not doubting the solvency of the Company, permitted the debtors of the Company to pay in cash, or checks on it. In this they acted in good faith. In this way, in a few days, its liabilities were considerably reduced; but, in the meantime, the trustees were embarrassed by attachments and suits, and by reason thereof it become necessary to arrange with that class of claimants, and thereon the trustees gave them and others the assets of the Company in payment, and thus reduced its liabilities, and withdrew its property from attachment; and, in this way, in good faith, not believing the Company insolvent, the trustees discharged a large amount of liabilities, until at last they were forced into an assignment.

X.—They say they had no power to protect the assets of the Company from off-sets, suits or attachments, nor hold them for equal distribution. They made no partial distribution to the prejudice of any intentionally. If such was the effect, it was incidental to any plan of adjustment, and unavoidable. In this they acted in good faith, believing the assets more than sufficient to pay the debts. After the suspension there was a general panic, and by reason of it, and the uncertain information from the New York agency, and the general depreciation of property and credits, the market value of claims upon the Company was below par; and during that time the defendants, who were indebted, paid off their debts by claims held by them against the Company, the trustees treating them like other debtors, and not otherwise. They deny any system of favoritism. The resolution of September 15, 1857, was adopted in consequence of the litigation then pressing upon the Company, and the execution of the deed of as-

signment was kept back, with the hope it might be avoided by adjustments then pending in New York. On this account it was postponed until September 26, 1857, when the trustees lost all hope of keeping control of the remaining assets, and some doubted the Company's ability to meet its liabilities, from the great change in the value of its assets, and complicity of its affairs. For the single purpose of preserving the remaining assets, and placing the settlement of the Company's affairs in proper hands, the assignment was made in good faith, and not to keep control of the assets and books of the Company for any sinister purpose. It is also true the assignees have since, under an order of the Superior Court of Cincinnati, surrendered up the assets in their hands to receivers appointed by the Court.

XI.—They deny generally that they, or any of them, in equity, are liable to complainants or other creditors of the Company, as charged in said bill. They deny they have been guilty of any negligence or misconduct. They deny all fraud, charged or imputed, and say they have acted in good faith, as trustees of said Company.

XII.—*Charles Stetson* answers, that he took no active part in the affairs of the Company until his election as president; since, he has devoted himself to his office to the best of his ability and judgment. By the by-laws, he had under his charge the supervision generally of its officers and affairs, and in good faith attended to his duties as such presiding officer. He participated in the appointment of Ludlow as cashier, believing him competent and trustworthy. He had been in the service of the Company many years in New York, was conversant with its business, and well recommended. He had no reason to doubt

his integrity, or question his fidelity, until the developments since the suspension. He confided in him as a faithful and competent officer, acting under the directions of the New York trustees. He attributes the suspension to his mismanagement of his agency, without his privity. He was not in Cincinnati when the assignment was ordered, nor when executed. He was in New York attending to said agency. After suspension, and before the assignment, he paid his debts to the Company. He was a stockholder at the time of the failure. He accepted the assignment in good faith, and acted under it and in all things else in good faith.

XIII.—*John C. Wright* answers, that while trustee he acted in good faith, to the best of his ability and judgment. He gave the Company's affairs much of his time and attention, without compensation, for the single purpose of its welfare. He had been a stockholder for many years, and was so when the failure took place. He paid his debt to the Company after the failure, and before the assignment. He was an assignee, and as such and trustee acted in good faith.

XIV.—*Samuel J. Broadwell* answers, he was a stockholder and trustee. He gave the Company's affairs his time and attention in good faith. He was a debtor at the suspension, and paid before the assignment. He was assignee, and as such and trustee he acted in good faith. He acted without compensation as trustee.

XV.—*Abraham M. Taylor* answers, he was trustee, and attended to his duties in good faith, without compensation. He was a stockholder. He was an assignee, and acted as such in good faith. He was not a debtor, though the Company was a debtor to him. He paid a mortgage debt,

held by the Company, on some property he owned, by the check of his firm, and received the collaterals the Company held.

XVI.—*George Crawford* answers, he was trustee, lives in the country, and has not attended generally to the affairs of the Company, trusting to his co-trustees, who did attend. He was a stockholder, and acted as trustee in good faith, without compensation. He was a debtor, and paid before assignment; also, assignee.

XVII. *Samuel B. Keys* answers, he was a stockholder, and became a trustee in 1855, and acted as such in good faith without compensation, giving the affairs of the Company much of his time and attention. He was debtor at the time of suspension, and paid the same except a small balance, before the assignment. He was in nowise privy to the suspension.

XVIII. *George T. Stedman* answers, he was stockholder and trustee, and acted in good faith without compensation. He was a debtor at the suspension, and paid up before the assignment. He was not privy to the causes that led to the suspension.

XIX. *Charles G. Engart* answers, he was stockholder and trustee, and acted in good faith without compensation. Before the assignment he paid the Company all he owed it. He was not privy to the causes of the suspension.

XX. *Sylvester C. Parkhurst* answers, he was trustee, and acted in good faith without compensation. He paid the Company all he owed it before the assignment and after the suspension. He was not privy to the causes of the suspension.

XXI. *Samuel Fosdick* answers, he was stockholder and trustee for many years, and acted in good faith to the best

of his ability and judgment. He gave the Company's affairs much of his time and attention without compensation. He was a debtor at the suspension, and paid his debt before assignment. He is aware of no mode of payment lawful to others, that was unlawful to him. He was not privy to the causes of the suspension. His action as trustee had no bearing upon his relation as debtor. He was assignee, and as such, acted in good faith, as well as in all things else.

XXII. *George Luckey* answers, he was stockholder and trustee from the beginning, and always acted in good faith, without compensation. While resident in Cincinnati, he gave the Company's affairs much of his time and attention; but since 1837 he has resided in the country, he has not been so attentive, confiding in those who did attend. He was on the finance committee, and gave proper attention to the duties of that committee, especially in making the proper examinations at the home office, as required by the by-laws. He was a debtor at the suspension, and nearly paid up before the assignment, leaving a small balance of a stock loan. He was not privy to the causes of the suspension, and not responsible therefor. In all his relations he has acted in good faith to the best of his judgment and ability.

XXIII. *Clement Dietrich* answers, he was stockholder and trustee, and acted in good faith as trustee without compensation. He was debtor at suspension, and paid before the assignment. He was assignee, and acted as such in good faith.

XXIV. *Samuel Forrer* answers, he was stockholder and trustee from the beginning, and acted in good faith without compensation. He always resided in the country, at a dis-

tance from Cincinnati, and confided in his co-trustees. He attended on extra occasions, and gave on such occasions such attention as he could. He was not privy to the causes of the suspension. He was a debtor at the suspension, and so continued, as he has paid nothing.

The answer is subscribed and sworn to or affirmed to, by all the respondents.

XXV. *Answer of Nathaniel Wright*, filed Feb. 27, 1860. He says the Company suspended Aug. 24, 1857, from losses occasioned by the misconduct and fraud of the New York cashier, while he was absent from Cincinnati. The assignment was made after he resigned as trustee, on Sept. 12, 1857. He says he can not answer in detail the allegations of the bill, as he had but little acquaintance with the details of the Company's affairs. He was elected trustee in 1853, and accepted with hesitation. He was deaf to such an extent as not to understand ordinary conversation, and had for some years indications of some affection of the brain, that led him to avoid perplexing application. Notwithstanding, he was urged to accept, suggesting his counsels would be useful in important matters, without his being familiar with details. In this view he accepted. He knew the board consisted of twenty members; six a quorum for ordinary business. Many of the trustees resided abroad, and took no part in ordinary business, the charter contemplating such state of case; there were in the board more than a quorum, who had attended and were familiar with the Company's affairs; some had been re-elected, and some had held from the beginning—this indicating their management was approved by the stockholders. They were men of high reputation for integrity, talent and experience in banking, and had so managed the institution as

to give it a high character. Under these circumstances, he considered it not improper for him to accept the appointment, not expecting to give much attention to details of business, in which at best he had little experience, considering his advice about the best service he could render. In this way he became a trustee, and is not conscious of any neglect in the course he pursued. He attended the meetings of the board occasionally, and at times frequently. He scarcely heard the conversations in the board, finding more difficulty than he expected, and seldom knew what was done, saving matters under his eye, unless his attention was specially called to what was done. Ordinary statements, etc., he could not hear; he is no accountant, and dull in accounts. He examined occasionally the books of the Company, and always with care matters upon which his opinion was asked, or where it seemed to him his examination would be useful. The active trustees were especially devoted and faithful as seemed to him, and feeling confidence in them, he remained in the board with slight knowledge of affairs, without being conscious of any neglect. He returned home Sept. 4, 1857. He attended a meeting, and from time to time, till Sept. 12, 1857, when he resigned. This was done from his conviction of duty to the Company and himself. Ordinarily he might be a spectator, but then it was quite different. Important questions constantly arose; all was anxiety and no time for delay. He tried for a few days to act intelligently, but it was in vain. He found he could be of no service, and it was unjust to remain. He found also the anxiety induced by the circumstances of the case was reviving his old complaint. He thus resigned, tendering his services in any way in which he could be useful. He does not know the

Company was insolvent at the suspension; he is informed and believes large amounts of assets were pledged recently by cashier in New York; other large amounts taken on attachments, and the result can not be ascertained, but believes if assets not sacrificed or mismanaged, debt will be paid. He denies losses occasioned by negligence of trustees, as far as he knows, and believes they were attentive and faithful. He denies the trustees failed to make examinations as required by the by-laws, or that they made loans to railroads and others on insufficient security, or contrary to the charter and by-laws, or they made dividends without proper examinations, or after capital impaired by losses, or they failed to hold monthly meetings, as required by 8th section of the by-laws; but in all these particulars they discharged their duties faithfully and according to law. He never made any examination, as that duty was not assigned to him. He was not present when dividend in July, 1857, was made, but understands it was made after the proper examination, and was from profits after leaving a considerable surplus.

He denies the trustees allowed Ludlow to borrow money as charged in the bill, or to pledge securities therefor, or to deal in stocks for the Company, or in its own stocks for it, or make loans as charged, or receive deposits, or buy and sell bills, and transact all other banking business, as charged, without the intervention of the trustees; on the contrary, it was the reverse, and he understood and believed he acted under the supervision of the trustees in New York, who were in daily attendance at his office and had authority to control him, and whose sanction was required in his important transactions; rigid rules were adopted from the

first and continued to all successive cashiers, and he knows no authority for their departure from such rules.

He supposed the Company was chartered to supply exchange, as that line of business was indicated by the charter. In this business, the plan seems to have been to make deposits in New York as a basis of exchange; the business becoming large, and peril of deposits with others apparent, the trustees located its cashier in New York for that purpose, deeming this the safest course. He understood and believes strict rules regulating this business were established, and every precaution that prudent men could devise to guard against mismanagement or loss was adopted, and it was managed and superintended by the trustees faithfully and to the best of their skill and ability. He is informed and believes the mode of business had been the same for some eighteen years, under all the able men who have officiated as trustees, with the approval of the stockholders and sanction of the Supreme Court of the State of Ohio, and he therefore saw no occasion to look with distrust on the management of the agency. In so large a business there must be great variety, but he does not know or believe Ludlow, with the assent or knowledge of the trustees, transacted any business on behalf of the Company that was not lawful, and he had no suspicion of such a thing. He understood and believes the stock was held or represented in New York that controlled the elections. Many of the stockholders were men of wealth and large experience, and some of them selected to give attention to the agency in New York. This circumstance gave him confidence, and the idea of danger from misconduct of the cashier never entered his mind, till he heard of the failure. He understood and believed the usual examination of the

accounts of the cashier were made both by the trustees in New York and by the President and committees from Cincinnati, but he does not suppose they were made with any suspicion of the integrity of the cashier. He denies there was any negligence relative thereto, as far as he knows or believes.

He was not personally acquainted with Ludlow nor present at his election as cashier, but understood and believes he was generally and strongly recommended by the trustees and stockholders in New York; he had been for some sixteen years employed in the office, commencing while young and trained up in the office, familiar with its affairs and reputed a man of business talents and of integrity, and until after the failure he never heard a suspicion against him. And what he has heard since, could hardly have been openly stated before in New York, without becoming known to some one interested in the Company or its safety. He believes no trustee in Cincinnati knew anything to excite suspicion against him, and so not led to that kind of scrutiny which suspicion would induce. He does not admit or believe any loss resulted from want of care in controlling Ludlow, or in examining his affairs. He learns from investigations since the failure that Ludlow's books were unreliable and false, for a short time at least before the failure, and so kept as to appear all right on inspection, furnishing no clue to detect the falsity, but not showing at all the true state of accounts; in many cases he made no entry of funds or bills with which he was chargeable; he made numerous and many charges against persons not indebted; his balances incorrect, that of the complainants for example, differing nearly half a million of dollars from their judgment, and these entries were in the accounts of

those residing at a distance, and such as not to excite suspicion, though they could not have continued long without detection, and by a variety of contrivances he managed to conceal his frauds.

He took no part in the arrangements made to pay debts after the failure, nor does he recollect of being present at the board when any order was made for such purpose. He understood there was no discrimination; that what was done, was under the advice of counsel. The sufficiency of the assets to pay the debts could not be known, and there were no grounds to doubt their sufficiency. The President was then in New York investigating the affairs, and the last report defendant saw from him estimated that half the capital would be lost, and suggested no greater loss. He denies any partiality in receiving payments from trustees or others. He knows nothing of settlements with trustees except his own. He owed $14,000, secured by notes and mortgages, which were assigned to certain creditors, who paid the same under arrangements made by his sons in his absence on Aug. 27, 1857, as appears by the papers. The Company also held his note for $5,000, which third persons had assumed in no way connected with the Company. This note was paid in part by deposits and eastern checks of defendant's at par, which were a legal set off at the time of the failure, and on behalf of those who assumed to pay it.

He was not with the board when the assignment was made, it being after his resignation; it was talked over while he was there, and there seemed to be much doubt about it—he had formed no decided opinion. He denies there was any intent in this or any of their doings to favor any one, or to keep control of the assets, books or

effects of the Company. He believes the motive of the assignment was a more economical management, and equitable distribution of the assets. He does not know the trustees refused an examination of the books, etc., to any who had a right to examine them, or in any case where it would be proper to grant it. There was much excitement, and some individuals made great efforts to excite prejudices against the trustees, using garbled statements of their accounts; others were evidently speculating in the debts of the Company, and seeking a color of authenticity to statements framed for the purpose; and in various ways it seemed that some, who desired to examine the books, etc., had sinister purposes in view; and as no control could be had over the use that might be made of them, and as no satisfactory general statement could be made, till a full investigation of Ludlow's affairs, it was proper, and he so advised, the books should not be indiscriminately submitted to those who had no legal right to inspect them. He has no acquaintance with the acts of the assignees under the assignment. He does not admit or believe the assignment was delayed improperly, but on the contrary, while he was in the board, the trustees hesitated, with some difference of opinion among them; the president and others in New York indicating opinions against it, and some hoping that affairs might be arranged with creditors. He denies the loss was occasioned by the negligence or mismanagement of the trustees, who, he believes, were faithful and diligent. Their management and course of business had been the same for some sixteen or eighteen years. He does not believe Ludlow was originally dishonest, but that he became in some unknown way involved in speculation, which led him into desperate adventures, and finally to reckless

ness, faithlessness and ruin. He says he acted in good faith, to the best of his judgment, without compensation; with his small experience, owing to his deafness, he is not conscious of any neglect of service, useful to the company, in giving so little attention to its affairs, which were attended to by others better qualified, and to whom he would have deferred; there was nothing to excite his suspicion of fraud or misconduct, and he rested in entire confidence in its good management, until its overthrow. He had no acquaintance with the affairs in New York, except what appeared from statements laid before the board, in which he saw nothing suspicious. There were large amounts of money entrusted to the Company to pay interest, etc., due from States, railroads, cities, towns, etc., which were placed in the cashier's hands in New York; and this, with a large exchange business, involved the handling of a large amount of capital; which, in course of time, would occasion various arrangements for securing doubtful debts, or guarding against losses, and thus occasioning a variety of forms of securities and accounts. He denies all fraud, etc., prays, etc. Answer sworn to by respondent.

III. Replication to answer of Stetson and others filed 21st December, 1859, and to answer of Nathaniel Wright, 25th June, 1861.

IV. Bill of Revivor filed June 5, 1861, against Stephen S. L'Hommedieu, administrator of John C. Wright, deceased, who, on 29th June, 1861, enters his appearance and entry of revivor, 1st July, 1861, in L. page 169.

STATEMENT OF THE EVIDENCE.

I. PLAINTIFF'S TESTIMONY.

I. W. T. STRAUB was appointed master to take testimony, as to the indebtedness of the trustees, mode of payment, and value of medium of payment. On 8th November, 1861, he made his report, accompanied with the depositions of S. P. Bishop, W. A. Goodman and Charles Goodman.

He reports indebtedness, etc., as follows, to-wit:

C. Stetson, $58,029 56, paid between 7th and 23d September, 1858, in checks.

S. J. Broadwell, $18,143 00, paid 26th August, 1857, in checks.

G. Crawford, $10,227 16, paid 9th September, 1857, in certificates and checks.

N. Wright, $21,500 00, paid between 27th August and 7th September, 1857, in certificates and checks.

C. Dietrich, $11,591 38, paid 7th September, 1857, in certificates and checks.

C. G. Enyart, $5,138 01, paid between 29th August and 1st September, 1857, in cash and checks.

Samuel Forrer, $12,025 28, transferred $2,025 28, due $10,000 00.

S. B. Keys, $22,548 86, paid between 28th August and 21st September, 1857, in certificates and checks.

G. Luckey, $22,078 20, paid between 28th August and 11th September, 1857, in checks, $19,206 57.

S. Fosdick, $10,000 00, paid Aug. 21, 1857, in checks.

S. C. Parkhurst, $13,187 44, paid between August 26 and September 7, 1857, in checks, etc.

G. T. Stedman, $17,421 00, paid between September 1 and 7, 1857, in checks, etc.

J. C. Wright, $21,619 77, paid between August 31 and September 16, 1857, in checks, etc.

1. S. P. Bishop sworn, and answers to questions:

1. His connection with the Company.

2. The indebtedness of the trustees as above.

3. The payments, and in what, etc., made.

4. Explains payments in detail.

5. Explains payments as to deposits.

6. Explains payments as to credits.

7. Debts in New York as follows: S. Fosdick, $716 08, unsettled and disputed; C. Dietrich, $1,500 00, settled; S. B. Keys, $3,878 48, settled; C. Stetson, $3,027 68 all paid but about $200; C. G. Enyart, $250 00, paid.

8. S. E. Foote had, August 24, 1857, a credit at Cincinnati office for $4,679 95, settled with Kilbreth, receiver, in settling note in New York office for $5,000.

9. Stetson left Cincinnati August 21 or 22, 1857, and absent till latter part of November, 1857.

10. Stetson, by letters of September 4 and 31, 1857—copies given—directed him to settle his debts, etc.

11. Relates to Stetson's matters, assets, etc.

12. Produces correspondence with Stetson of September 5, 10, 11, 14, 11, 9, 16, 15, 19 and 23, 1857.

13. Who clerk from August 24 to September 26, 1857, of the board of trustees. Rice, and in his absence, Broadwell.

14. Journal of board in office.

To cross-questions by defendants' counsel:

1. Stetson's debt, in individual ledger, not reported to trustees by him; his duty to do it, and gives by-laws.

2. Trustees act under advice of counsel, and give two written opinions of counsel, W. & M., Exhibit Y of September 2, 1857, and Exhibit Z of September 16, 1857.

2. W. A. Goodman sworn, and answers to questions:

1. His business banking, in Cincinnati, in 1857.

2. Dealt in Company's checks.

3. From suspension to September 26, 1857, checks worth from 60 to 90 cents; first two weeks, between 75 and 90 cents; next two, between 60 and 75 cents; for two or three weeks, sold at par, in large amounts, after suspension.

3. Charles Goodman sworn, and answers to questions:

1. His business banker, in 1857 and 1858.

2. House dealt in Company's checks.

3. From October 17, 1857, to May, 1858, checks sold from 34 to 40 cents. In buying, margin 5 per cent. After assignment, sunk to 40 cents. From that time to October 17, 1857, from 35 to 40 cents.

II.—Depositions taken at Merchants' Exchange, in New York, between July 10 and 24, 1861, by H. Stanberry,

at room No. 74, having met on July 9, 1861, at room No. 79, and adjourned to next day, at room No. 74.

1. JOHN S. CARR, named in caption and sworn, says:

1. He resides in Brooklyn, and clerk in American Exchange Bank, New York.

2. He was in New York agency from February, 1851, to failure; first as collecting clerk, and next as paying teller, with power to sign checks, from August, 1852, to failure.

3. As paying teller, he paid all drafts and checks through the office.

Draws checks.

4. He paid by checks on banks, signed by himself or cashier. He commenced drawing checks in February or March, 1854, and continued till the close. His powers so to do came from Cincinnati, when he began to draw, or shortly after. (*None shown.* In 1855, see Ex. 124; Bishop's dep., 2d.)

5. He had under charge check, loan and cash books; the first contained deposits and payments; next, mere accounts of loans; and last, cash received and amount on hand in the morning, and amount paid at close of the day.

Cashier loaned.

6. Loans made by cashier of money in the office.

7. He does not know the evidence of loans. Loan book made by him from debit and credit book.

8. Cashier had notes or bills on loans. He paid on his tickets.

9. Amount paid daily ordinarily large; can not give average. When paying Ohio loan, amount over a million dollars a day.

10. The clerks besides himself were bookkeeper and assistants, corresponding clerk, transfer clerk, note teller, debit clerk, cashier's clerk, assistants to paying teller, and two or three runners.

11. The books, general ledger, including accounts with banks and individuals, [illegible] and credit book, stock ledger, stock transfer book, letter books, check books, loan books, and statement book.

12. Does not know of any minute book kept by trustees.

13. Cashier made loans as far as he knows. Cashier loaned.

14. He remembers no examination, while teller, of his books, except loan book, or of loans made with the loan book. He can not recollect when last made. It was by one or two of city trustees. Examination.

15. Coe and Stedman were two of the trustees, he thinks; whether others, he does not know. N. Y. trustees

16. These trustees took no part in the daily business.

17. No examination from home office, while he was there, to his recollection. Examination.

2. GEORGE S. COE, named in caption and sworn, says:

1. He resides in Brooklyn, New York.

2. He was cashier in the office in New York about five years, commencing in 1848, and since trustee.

3. Trustees in New York, Charles Stedman and Robert Bayard; the former while he was trustee, and the latter the whole time, or nearly so. Rufus L. Lord had been trustee with him, but had resigned.

N. Y. trustees advisory.

4. The trustees in New York did not act as an organized board. They were considered advisory, when inexpedient to receive instructions from home office.

N. Y. trustees advisory.

5. The office in New York was not, to his knowledge, placed under formal supervision of resident trustees, further than advisory; no business originated with them, nor did they sit as a board.

How loans made.

6. In his time, and he believes after, loans made by cashier under instructions from home office, and, in exceptional cases, by advice of a trustee.

Cashier borrowed.

7. Cashier borrowed money for office.

Statements by him.

8. While cashier, he rendered semi-monthly statements to the home office, and he believes that practice was continued.

9. The New York trustees held no stated meetings, and kept no journal.

Examinations

10. He was not aware of any written rule making it the duty of New York trustees to examine the condition of

New York office, but he believed the cashier was instructed to communicate with trustees, to have the aid of their judgment.

11. During his time, no examinations made; while trustee, it was made several times, at his instance. Examinations

12. He can not fix date of last examination; a copy, with letters, sent to home office. (*See* 27 *below.*) Examinations

13. He recollected none by committee from home office, except on change of cashier. Examinations

14. Ludlow was clerk with Vermilye, who preceded him; corresponding clerk and assistant cashier with him, and afterward with Rockwell, his successor, and he followed Rockwell as cashier till suspension. Ludlow.

15. The New York office was to attract deposits, to be used to facilitate business and profits at Cincinnati, and was auxiliary to it. It advanced to home office as large as was considered safe, leaving ample funds in New York to meet requisitions of depositors in New York. The amount thus reserved was generally on demand with collaterals in stocks and bonds. N. Y. agency for.

16. This fund was exclusively deposits.

17. In his time, 4 per cent. interest allowed; after, he believes, 5 per cent. Interest allowed.

18. Loans made at 7 per cent. and under. Interest received.

19. The form of security for loans was a note on demand specifying collaterals and generally containing authority to sell. Form of security.

Why Ludlow borrowed.

20. He supposes Ludlow borrowed money to meet liabilities. It had been the habit of the office.

Necessity of borrowing.

21. The necessity to borrow was induced thus: the office frequently called on to lend money by re-discounts of bills sent for collection, and as the western business was influenced alike, the necessities of such customers and the home office alike, so that the reduction of deposits and call for loans would happen when the home office could not repay, it therefore frequently became necessary to borrow as a means of relief.

Necessity of borrowing.

22. This re-discounting done first by office, afterward by loans, with collaterals pledged.

Necessity of borrowing.

23. In such re-discounts the office indorsed the paper.

Necessity of borrowing.

24. This, he supposes, was Ludlow's general way, except he borrowed on Company's credit alone. This was done in his time, but they were exceptional cases.

Necessity of borrowing.

25. When so borrowed, a note, check or credit was given by the office.

Extent of liability.

26. To best of his recollection, the office balance sheet shows a liability from one to two millions of dollars. This was about the average in his time. Daily operations ranging from three to eight hundred thousand dollars. Correspondence large, and he believes second in the city as compared with others.

Examination.

27. One examination about May 1, 1856. This, that referred to in answer to question 12. Other in April, 1857.

28. In his time, he sees from a copy of a letter of his, a proposition was made to him from home office in May. 1850, to dispose of the bonds of the Little Miami R. R. Co. and Cin., Ham. & Day. R. R. Co., guaranteed by the Company. He can not recall the facts, they must be found in the letters. Little Miami bonds.

29. The transactions with the Nashville Insurance Company were before his time. When he took office in 1848, he found a heavy loss had been incurred on that account, amounting to some four or five hundred thousand dollars. It arose, I believe, from the failure of a London house, to whom the agent of the Nashville Company at New Orleans remitted bills, to be drawn against by Vermilye, cashier, to the credit of the Nashville Company. To make up this loss the Company suspended its dividends for a time. Gower loss.

3. EDWIN LUDLOW, *not named in caption*, but sworn, says:

1. His age thirty-six years, residence New York.

2. He was first clerk in New York office from 1844 to 1853, then assistant cashier for two years, and then, on Rockwell's resignation, cashier.

3. Cashier in New York was cashier of Company, and at home office, assistant.

4. His duties were to receive deposits, pay drafts, bor- Cashier's duties.

row money, make loans, and transact all kinds of banking, except issuing notes for circulation.

Amount of N. Y. business.

5. The business at New York amounted to from two and a half to four millions of dollars continually from 1850 to the close of the office.

6. On deposits and borrowed money.

Deposits in N. Y.

7. Deposits from a million to a million and a half.

Interest in N. Y.

8. Interest 4 per cent., then 4 and over, according to the market.

Borrowed money in N. Y.

9. Money borrowed varied from one half to two millions, according to wants of Company.

Interest in N. Y.

10. Interest on borrowed money 4 per cent. and over, according to market.

Loans to home office.

11. Deposits and borrowed money loaned and supplied to home office.

Amount to home office.

12. Used in Cincinnati from one half to one and a half millions continually.

Interest on loans.

13. Interest on money loaned by the office 6 and 7 per cent.

How loans secured.

14. Loans of office upon current market securities, upon notes with collaterals.

Amount of office loans.

15. Loans averaged from a half to a million of dollars.

Collaterals.

16. Collaterals for loans of every kind, bank, railroad and insurance stock, etc.

Railroads.

17. Railroads preponderated in the collaterals.

Loans on collections.

18. The office was not in the habit of discounting bills

and notes sent by western correspondents before maturity by regular discounts, but by loans.

19. A certain amount of this paper loaned upon its face, and at maturity of the last interest charged upon the whole. Loans on collections.

20. The office did not hold such paper till maturity, but generally had it discounted for its own accommodation. Loans of collections.

21. In obtaining such discounts, he indorsed such paper. Indorsed such paper.

22. In carrying on the business of the office, he had the assistance of a board of directors. Directors assisted.

23. They were Robert Bayard, George S. Coe and Charles J. Stedman, trustees in New York. N. Y. trustees.

24. They did not meet as a board. regularly No board in N. Y.

25. There was no journal kept by them. No journal in N. Y.

26. They aided him in borrowing money. Aid in borrowing.

27. They were consulted individually, never as a board. How consulted.

28. There was one examination in his time by the home office, when he assumed office, and two by New York trustees, dates not recollected. Examination.

29. Home office, he says, cognizant of his borrowing money. Home office advised.

30. Also of his discounting and re-discounting collection paper. Home office advised.

Home office advised.

31. Also of loans on collaterals and nature of securities.

Home office advised.

32. Advised by correspondence and semi-monthly statements.

London credits.

33. During his time, he dealt in London credits.

Bell & Grant.

34. The nature of their business was an open credit with Bell & Grant for £50,000. He had authority to draw to that amount, to be remitted by him before it matured. Interest and commissions allowed for credit.

Bell & Grant.

35. Credit opened to raise money for New York office, beyond what it could get in New York.

Bell & Grant.

36. This mode originated with New York office and suggested to home office.

Bell & Grant.

37. Suggestion approved by home office.

Bell & Grant.

38. He was in the habit of purchasing sterling exchange.

J. Lee & Co.

39. The operation was this: he borrowed of James Lee & Co., at sixty days, taking bills on Western Bank of Scotland, which he re-sold to him or others, and had to pay in London or here, with an averaged rate of exchange.

40. This negotiation was to raise money for wants of the Company.

41. Home office cognizant of the purchasing of sterling exchange.

Home office led to this.

42. The drafts of home office led to obtaining money in this way.

43. Average drafts of home office from one half to one and a half millions over money had. Home office over drafts.

44. These were sight drafts. Home office over drafts.

45. To let them go to protest, would have caused a failure. Effect of protest.

46. These drafts not made at his suggestion, controlled by home office. Not at his suggestion.

47. When these drafts oppressive, he protested against them. He protested.

48. They would then lighten up, but were renewed and reached old amount. Lighten up, etc.

49. Besides sterling bills, he borrowed from banks, bankers and brokers. Borrow'd from

50. This borrowing was necessitous. It necessitous.

51. Home office advised by his daily correspondence, of necessity to borrow to meet drafts. It necessitous.

52. New York office had transaction with Clev. & Pittsburg R. R. Co. It began in 1853 or 1854, under Rockwell. Gilbert & Johnson owed New York office about $75,000, security insufficient. They proposed if Company furnished money to carry out a contract they had with railroad company to furnish railroad iron, they would make over the profits of contract to pay their debt — amount required $250,000. This was sanctioned by home office, and unclosed when he took office as cashier. The subsequent transactions with said railroad company were the sequence of this. C. & P. R. R. Co. Gilbert & Johnson,

C. & P. R. R. Co. 53. Rockwell left the Company to take presidency of said railroad company.

C. & P. R. R. Co. 54. In his time, office had made loans to said railroad company.

C. & P. R. R. Co. 55. The amount he does not recollect.

C. & P. R. R. Co. 56. These loans secured by the bonds of the railroad company.

C. & P. R. R. Co. 57. After he became cashier, he advanced to considerable amount, to secure what had been previously had, in order to protect the credit of railroad company.

C. & P. R. R. Co. 58. The amount advanced increases, till several hundred thousand dollars.

C. & P. R. R. Co. 59. In his opinion loss from the transaction, can not state the amount.

C. H. & D. R. R. Co. 60. New York office transfer agent of stock of Cin. Ham. & Dayton R. R. Co., and paid interest on bonds, & loaned money to Co.

C. H. & D. R. R. Co. 60½. This business for said railroad began at instance of directors of railroad and trustees of company, as far as he recollects, C. Stetson, S. Fosdick, C. J. Stedman, G. T Stedman.

Speculations, etc. 61. He was engaged with Fosdick, the two Stedmans, who were trustees, in the purchase of $100,000 of the second mortgage bonds of Cin. Ham. & Day. R. R. Co., at 80 or 82 per cent., in July, 1856. There may have been similar purchases of the Company's stock with some of the trustees, but can not recollect about it. The purchase of

said bonds of said railroad company, was made to keep up its credit, so they could hold what they had purchased.

62. Loans were made at New York office to Parkhurst, Fosdick, Stedman and Stetson of home office trustees—all he recollects. Advance to trustees.

63. These loans secured by collaterals of different kinds. Advance to trustees

64. They were made sometimes on call and sometimes on time. Advance to trustees.

65. He, while cashier, purchased Company's stock to large amounts. Purchased Co's. stock.

66. These purchases made to sustain market value of stock. Why he purchased.

67. Some of the trustees knew of his purchases. Who knew it.

68. He means both home and New York trustees. Who knew it.

69. These purchases sometimes at his own suggestion, and sometimes result of conversation with trustees. Who knew it.

70. Had at time of suspension 2500 or 3000 shares. How much.

71. About 500 shares of this stock belonged to Robert Bayard, then a trustee. It was purchased at the broker's board, some 60 or 90 days before failure. He did not know to whom it belonged, till it came in to be transferred. He paid 95 for it, he thinks. It was all the stock he then held. He purchased none afterward. Bayard advised him from time to time prior to purchase, to watch the board and keep stock up. Bayard's stock

Loans to clerks.

72. Loans at New York office made to clerks and employees.

John Ackerman.

73. John Ackerman, bookkeeper, had about $10,000 on Ind. & Cin. R. R. Co. stock, Clev. & Pitts. R. R. Co. stock, and Mad. & Ind. R. R. Co. stock. This practice began before his time, and continued. Part of this $10,000 loan made in Rockwell's time—say $3000, and residue in his time. There was a loan to Depew, a clerk, of about $5000, under the time of Rockwell, and continued, secured by Clev. & Pittsburg R. R. Co. stock. These standing at time of suspension.

Depew.

Statements show these.

74. The statements sent to home office show these loans.

No limits for loans.

75. He had no limits given by home office for extent or amount of loans.

Daily loans.

76. The daily loans made to the office for some months prior to failure, would average $750,000.

Who from.

77. They were made from all the large banks and bankers in New York.

The largest from.

78. The largest amount from American Exchange Bank was as high as $750,000.

Coe its cash'r.

79. Cashier of that bank at the time was George S. Coe.

Coe also trustee.

80. He, Coe, was trustee in the company at that time.

Loan to M. & C. R. R. Co.

81. In Oct. 1855, $100,000 loaned to Marietta & Cin. R. R. Co., under instructions from home office. (*See answer to* 102, *S. P. Bishop.*)

82. This loan secured by bonds of the railroad company. Loan to M. & C. R. R. Co.

83. Loan made at Cincinnati office, and money furnished at New York office. Loan to M. & C. R. R. Co.

84. About two millions due by New York office at time of suspension. Amount due at failure.

85. He supposes the interest on these loans to be,—the highest, from 12 to 14 per cent., and lowest, 7 per cent. (*See his answer*, 10.) Interest on loans.

86. The twenty years' certificates paid off at New York office, except about $17,000, which matured after failure. 20 year certificates.

87. The amount paid was $750,000, in the years 1855, 1856, 1857. 20 year certificates.

88. The money to pay them borrowed from New York office. Paid by money borrowed

89. The consequence was the increased liabilities beyond its resources just that amount, which led to the greater necessity of borrowing. Consequence.

90. This continued necessity of borrowing weakened the Company's credit, until it finally destroyed it, and involved the necessity of paying a higher rate of interest and larger amount of collaterals. Effect of borrowing.

91. The Company's credit impaired for six months before failure. (*See his answers* 76, 77, 78.) Credit impaired 6 months

4. HERBERT TAYLOR named in caption, and sworn, says:

1. He is thirty-two years old, and lives in England.

2. He knows the plaintiffs.

Pltf's agent. 3. He was their agent after suspension, to collect their claims.

Visits N. Y. 4. He visited New York for that purpose, in September 1857.

He saw Stetson, etc. 5. He saw Stetson in New York repeatedly, informed him of his business, and amount of claim, as ascertained at the time, and afterward, as it increased by bills remitted to them and protested for nonpayment. He inquired of Stetson whether an assignment had been made, and he informed him it had been done, and expressed a surprise it had not been carried into effect at an earlier day; for from the first day of his arrival in New York, he found the affairs of the agency in such a completely involved and incomprehensible state, that he could never form the least conception as to whether the Company was solvent or insolvent; that each day brought about disclosures serving to increase his anxiety and uncertainty as to the result, that he could not undertake to say whether there would be assets enough to pay 5, 10, or 50 cents on the dollar; and as he had advised his colleagues at Cincinnati of this state of things, it was utterly unintelligible to him that they should have paid out the assets as they did previous to carrying the assignment into effect.

Conversed with Coe, etc 6. He conversed with Coe and Stedman, introduced by Dwight Johnson, as trustees in New York, made known to

them his agency for plaintiffs, and expressed his surprise that the assets should have been paid out in Cincinnati. They expressed their sorrow for the situation of plaintiffs, and added, it was unintelligible to them that the Cincinnati trustees should pursue the course they did, in not making an assignment earlier; neither could give him the least idea what the unpaid creditors might expect from the unpaid assets.

5. JAMES LEE, named in caption, and sworn, says:

1. He resides in New York, is a merchant, and of James Lee & Co.

2. His house had transactions with the New York agency. One was very large. They occurred in 1856 and 1857.

3. They loaned the Company money, and granted credits on England. What he did.

4. They amounted from ~~ten~~ two to three hundred thousand dollars at a time. Amount loaned.

5. He took the Company's notes, signed by Ludlow cashier, with railroad bonds and notes, and bills of individuals as collaterals. Notes sometimes on demand, others at specific periods. All notes and bills given as collateral indorsed by Ludlow, cashier. Security taken.

6. Interest paid, seven per cent. Interest paid.

English credits.

7. The English credits were on Western Bank of Scotland. Bills payable in London, against which, Ludlow, as cashier, drew bills of exchange on the bank payable in London. The condition of the credit was that Ludlow should remit or pay him to remit in time to pay bills at maturity.

Ludlow's bills

8. Ludlow's bills generally sixty days, sometimes four months.

Commission.

9. The consideration of these credits, one per cent. usual commission.

Interest paid.

10. Interest arranged at seven per cent.

Credits reached.

11. The credits at one time reached £40,000.

Sent son to Cincinnati.

12. As these transactions were large, he thought it prudent to send his son to the home office, in Cincinnati, to ascertain whether they were aware of the extent of Ludlow's operations with his house. His son, Benjamin C. Lee, was one of the firm, went to Cincinnati, had an interview with Stetson, and explained the extent of these transactions. This was 19th December, 1856. On his return, he informed him that Stetson had informed him that he was fully aware of these operations, and the Company responsible for all Ludlow's acts. Soon after his son's return they received two letters, dated 19th December, 1856, one signed by C. Stetson, President, addressed to the house, exhibit A. (*Copy.* "Ohio Life Insurance and Trust Company. Cincinnati, 19th December, 1856. Messrs. James Lee & Co., Bankers, New York, Gentlemen: I am authorized by the board of trustees of this Company to as-

sure you, that any and all liabilities incurred by Edwin Ludlow, Esq., as cashier of this Company, in New York, are and will be recognized and assumed by this Institution to the full extent of any such liability. Respectfully yours, C. STETSON, President.") The other addressed to his son, B. C. Lee, exhibit B. (*Copy.* "Mr. B. C. Lee, New York—Dear Sir: I trust this note will find you 'safe and sound' among your kin. I have availed of *the* hint or suggestion thrown out by you when here, and with this you will find the needful document. I trust it is in such form as meets your views. There is no need of my saying that this note and the letter are to be considered as confidential. Let me hear from you at your leisure. Cincinnati, 19th December, 1856. Truly yours, C. STETSON.") They came in one envelope address B. C. Lee, Esq., care of James Lee & Co., Bankers, New York, which is attached, post-marked, Cincinnati, December 19. Exhibit C. Upon the strength of these communications they continued their transactions with Ludlow.

6. GEORGE O. DEPEW, named in caption, and sworn, says:

1. He is thirty-six years of age, resides in Westchester, New York, not in business, formerly clerk in The Ohio Life Insurance and Trust Co.

2. He was corresponding clerk in New York office, first in 1852, debit clerk for two months, or so. He then took

Clerk in N.Y. office.

the place of note clerk; kept transfer books, after that corresponding clerk till suspension.

What he did. 3. He kept stock ledger in 1857.

What he did. 4. He also kept stock dividend book to January, 1857.

What he did. 5. While he had charge of stock books, he made statements of names of stockholders, and amount of stock on the books of the office to the home office at Cincinnati.

What he did. 6. They were sent twice a year, and contained the names of the stockholders on the books of the Company, and amount of stock held by each.

What he did. 7. I sent also a list every two years for election purposes; this contained names of stockholders and amounts of same.

Examination. 8. He remembers no examination in his time of the stock books by the trustees or a committee of trustees.

"E. L., cash., special account." 9. There was an account on the ledger, in the name of "E. Ludlow, cashier, special account." He finds from ledger it was opened in October, 1855, and continued to suspension.

Can't explain it. 10. He can not explain the nature of this account, nor its items.

John Acherman. 11. John Ackerman, book-keeper, died a year ago. He kept above named ledger.

The books. 12. The books of the office given.

13. Office in New York suspended 24th August, 1857. Time of suspension.

14. He was in the office that day.

15. The office paid up to about noon of that day.

16. At noon of that day the sheriff took possession.

7. GEORGE S. ROBBINS, named in caption, and sworn, says:

1. He resides in Westchester, New York, and banker in city of New York.

2. He has been in business seventeen years.

3. He has loaned money during that time to New York agency. Loaned agency.

4. They were subject to call, never exceeding seven per cent. interest. Interest.

5. He made loans principally from 1854 to 1857. When.

6. He negotiated with Ludlow, cashier.

7. The amounts varied from $25,000 to $100,000. Amounts.

8. He means at times the office owed him $100,000. In the aggregate, it might have been a million.

When he stopped. 9. He ceased to make loans in the early part of 1857.

Why. 10. He ceased from want of confidence.

The causes. 11. The cause of his want of confidence was irregularity in the mode of transacting business; the constant borrowing money he regarded inconsistent with the objects of such an institution.

He refused loans. 12. He refused Ludlow loans after said cessation.

Credit suspected. 13. He knew the credit of the New York office suspected by some few parties, for five or six months prior to failure.

14. The business of these suspicious parties like his own.

15. He was advised of suspension by personal intercourse.

N. B.—The notice to take the above depositions at room No. 79 of Merchants' Exchange, in the city of New York.

III.—Deposition taken, under notice, in Cincinnati, beginning September 23, 1861.

1. SAMUEL P. BISHOP, being sworn, says:

1. He was assistant cashier from April, 1843, and lived at Cincinnati. The cashier lived at New York.

2. The business divided into the trust department and banking department.

3. The business of each department stated in the by-laws; copy attached; exhibit A. (See page 19, rule 11; page 23, for standing rules of trust department, and page 30, for standing rules of banking department.)

4. Capital stock of departments two millions of dollars.

5. By reference to books, capital stock all outstanding, August 24, 1857. Capital, Aug. 24, 1857.

6. According to books, capital stock originally invested in real estate.

7. On August 24, 1857, there remained so invested $1,259,118 15. Capital, Aug. 24, 1857.

8. He can not state how residue of capital invested went in general business. Capital, Aug. 24, 1857.

9. He can not state residence of stockholders. From the stock books at Cincinnati, the amount of stock standing upon books in Cincinnati, July 6, 1857, time of dividend, 1,172 shares.

10. The balance of stock stood upon stock books in in New York office—18,813 shares, and in transit 15 shares. From examination, he finds stock registered in Cincinnati office held in Ohio or West, and in New York office, 577 shares held west of the mountains, as he believes; the balance on New York books held East; but a great many he knows nothing about.

Dividends, 1855, etc.

11. Dividends declared in January, 1855, 3½ per cent.; in July, 1855, January and July, 1856, 4 per cent.; January, 1857, 4½ per cent.; and July, 1857, 5 per cent.

Capital, bank department.

12. The capital of banking department was originally made up of two loans, amounting to $600,000.

Capital repaid.

13. These loans repaid in 1856.

Capital since deposits.

14. Since it did business on deposits. After these loans were paid, there was no specific fund designated banking capital.

Twenty year certificates.

15. The Company raised $600,000 upon a credit of twenty years, upon which certificates were issued.

N. Y. agency, 1838.

16. New York agency established in the fall of 1838.

Rules for N. Y. agency.

17. He finds on minute book of trustees, page 75, of July 12, 1843, the following about New York agency. (*Amendment proposed.*)

"1. All loans to be called in, and no money loaned by agent unless specially ordered by the board.

2. No contracts by the agent for the purchase of stock or other securities without the order of the board.

3. He shall not sell the stock or securities of the Company, except under direction of the board, unless necessary to protect the credit of the Company.

4. The agent not to embark in any business except on account of the Company."

Which amendment was negatived. The original resolution was then called for and adopted, to-wit: "*Resolved*, That, in the opinion of the board, the continuance of the agency at New York is called for by the interests of the

institution." Messrs. Williams, Wright, Walker, Burnet, Baldridge, Luckey, Disney, Stetson, Taylor, and Swayne in the affirmative, and Fosdick in the negative.

On motion, it was further "*Resolved*, That the agent in New York shall not hereafter engage in any regular business, other than that of the Company; nor shall he loan the money of the Company, except with the consent of one or more of the trustees resident in New York; nor shall he sell or otherwise dispose of the stock held by the Company, unless so directed by the board of trustees." All voting in the affirmative.

On page 502 of same volume (1), February 14, 1855, he finds:

"*First.* That the trustees, from circumstances that have transpired from time to time at the agency in New York, have been forced to the conclusion, that the leading motives for the establishing and continuing said agency have been misunderstood; that its creation was, and its continuance is, for the sole purpose of affording facilities here, and not with the object of making loans at the agency, when the funds can be employed here with safety, nor from any direct profit expected from said agency.

"*Second.* That any pledges or encouragement heretofore given out at the agency to depositors, that they can rely on an advance of funds, when called for by them, should be withdrawn at the earliest period, that the same can be done without prejudice to the interests of the Company.

"*Third.* That the existing loans be called in and reduced, with as much promptness as circumstances will warrant.

"*Fourth.* That for all loans hereafter made, the assent or approval of one or more of the trustees at New York

shall be had, and no loan shall hereafter be made without good and available stocks as collateral security, with a margin of at least 20 per cent. excess between the market value of the stock and the amount of the loan, which margin shall be kept good during the continuance of the loan, and all loans shall be subject to payment on not exceeding five days' notice.

"*Fifth.* In no case shall a loan be made on the stock of this Company.

"*Sixth.* The cashier will transmit weekly a brief statement of the loans made, giving the name of the actual borrower, amount, security, rate of interest, subject to what notice for payment, and the name of the trustee assenting.

"*Seventh.* The trustees of the Company are of opinion that the interest of the institution will be more promoted by having the agency regarded as a place where borrowers can be accommodated at low rates of interest, on unquestionable securities, than where loans are made, at high rates, on questionable security."

C. S.'s letter, June 29, '57

18. He exhibits copy of letter of C. Stetson, president, of June 29, 1857, as requested. Exhibit B. It is as follows, to E. Ludlow, cashier:

"My last respects to you was under date of the 22d inst. Yours of the 11th and 22d inst. came duly to hand. As to the John Thompson matter, I will reply in a day or two; meanwhile, take from him any Kanawha notes he may have, as before advised. The telegraph you and Coe have sent us, under date of the 26th and 27th, are quite astounding; and, at such short notice, it is wholly impossible to do what you require. We have been into Ken-

tucky to procure ex. to send you, but have been wholly unsuccessful in our endeavors. We shall use every effort possible to reduce our account to the figure you have named, and shall make no bills upon you that we are not absolutely compelled to. This appears to be one of those occasions when you should resort to the credits on London, on which matter you have authority to act as may be deemed best. With Messrs. J. Lee & Co., I presume you would find no difficulty in arranging for £50,000, or more, if needed. The rate of exchange is now high, and at maturity of sixty or ninety days' bills, I do not think they will rule higher, if as high as at present time. You have the 200th Hamilton and Dayton 7 per cent. bonds; on these you ought to be able to borrow 150th; then you have some short paper, which I should think might be discounted by some of those banks with whom you have dealings."

London credits.

19. He is asked to give copy of letter to James Lee & Co., of 19th December, 1856. It is same as given in James Lee's deposition, *answer* 12. There is at foot, in pencil, "Present when read and approved, J. C. W., C. J. E., S. C. P., S. J. B., S. B. K., G. T. S., A. M. T., and S. F.; C. Stetson."

James Lee & Co.

20. He is asked to give C. Stetson's letter to E. Ludlow, of 5th June, 1857, page 64. It is as follows: "I was not aware, till I had reference to my letter book, that so long time had elapsed since I had this pleasure. I shall not suffer myself to be so negligent in future, in this respect. Your valued favors of the 6th, 12th, 16th, 20th ultimo, all came to hand. We have disposed of the Covington and Lexington Railroad bonds, here equal to 70, giv-

C. S.'s letter, June 5, '57.

ing the buyers six months credit; the paper payable in your city, this well, as they cost only 64 last fall. We have nothing from you respecting the Rochester claim. Will you hunt it out and report? You will remember that I added a few lines to a request of our book-keeper, respecting certain differences in our accounts. No return as yet from your office, but Mr. Lyle is daily looking for the corrections. You have in your keeping the remains of some thirty bonds of the city of Cincinnati. Can you not wind them up, at a fair figure? Please advise. Your report of loans up to the middle of May came duly to hand, but since then we have received none; they may be asked for some day, when I shall not be able to report. I send you our statement to 1st June; from the earnings in bank department, must be deducted the interest, balance due you, and some others not yet ascertained, say $15,000 or $20,000. We all are of opinion that 4½ dividend is large enough to declare in July, still they may yield the point and give 5 per cent."

As to reports, etc.

As to July dividend.

21. At date of these letters, Stetson, president, and Ludlow, cashier.

22. Copies given, taken from official letter book.

23. The New York office sent semi-monthly statements on first and fifteenth of each month.

24. These statements showed the balances due by the New York agency to correspondents and depositors, and of the means and balances due to it.

Statement, Aug. 16, '57

25. He finds last balance sheet from New York agency, bears date 16th August, 1857, and presumes received be-

fore suspension, not certain. Copy attached, exhibit E, which see. It balances, $3,199,128 80. It makes Cincinnati office debtor, $734,551 12. Bell & Grant, $119,304 59.

26. He says, left hand column shows means, other liabilities.

27. The first item on left hand column is the debt of home office.

28. The second item, $982,145 77, loans, he believes, by New York agency.

29. He believed, at the time, they were loans under instructions in answer 17, but since suspension found it not to be the fact. Loans under instructions.

30. He has examined balance sheets back to May, 1851, and finds in all of them such an item of loans.

31. In balance sheet of May 1, 1851, loans, $833,653 68. He examined balance sheets, from May 1, 1851, to August, 1857, and thinks loans in New York office averaged $1,000,000. Loans, average, N. Y.

32. In answer to question, if Cincinnati office had any means of ascertaining the terms and securities of these loans, he says he had not charge of this matter, but the president. He finds some of Ludlow's reports of these loans. (*See cross-answers*, 90, 91.)

33. He is asked to exhibit last of these reports, and exhibits that of May 1, 1857, which is attached, marked exhibit F. Reports, Loans F.

34. Statement does not show on what time or rate of interest the loans made.

35. He can not explain how it is that some of these loans appear of many years standing. The loans to trustees, Coe and Stedman, were on stock, and he supposes allowed to stand on that account.

36. All loans, he supposes, in exhibit F, were demand loans.

37. The loans to Coe and Stedmen, he supposes, were permitted to stand because they were not in want of money.

38. At the home office it was not the pratice to allow renewals, nor to promise them. D'ont know any to trustees, except as provided in 17th section of charter, exhibit A.

Loans to trustees.

39. Amount loaned to trustees under that section varied from $5,000 to $20,000. Some had none.

40. Stetson, at time of suspension, had, as reported in his former deposition before the master, Straub.

41. Collaterals, taken in New York office, not sent to Cincinnati.

Reports show, etc.

42. He is asked what means trustees had to know securities were in New York office. He says, from report of cashier, approved by resident trustees in New York.

Reports approved.

Some of these have the signature of Mr. Coe, and some of other trustees, and others purport not to be approved.

43. He is asked if any examination for three years before suspension. He replies, examination in spring of 1856, by Bayard, Stedman and Coe, trustees in New York. Examination in 1856.

44. He is asked to give a copy of that report, and gives it, exhibit 9. He also believes exhibit F, to be result of examination in 1857, by trustees in New York. *See these reports.* (This report will commend itself to the consideration of the Court, as an answer to the resolution of 14th February, 1855, of the board of trustees in relation to the New York office.) Examination in 1857.

45. He recollects report of 1857, was accompanied by a letter from Coe, which he can not find, but will look for it. Examination in 1857.

46. Exhibit F, shows the loan account only. Examination in 1857.

47. He recollects no other examination.

48. He is asked if minutes of board of trustees, from 24th August, 1857, to 26th September, 1857, are before him, and to exhibit a copy—which he does, and exhibits H, as such copy. Which see. Minutes, August 24 to Sept. 26,'75.

49. He is asked for last balance sheet of Company, prior to suspension, and says, last general statement was of 17th August, 1857. Statement of Aug. 17,'57

50. Gives a copy, marked "exhibit I;" which see. It shows means, $5,507,791 50; liabilities, $3,224,210 99 Excess $2,283,580 56. Statement of Aug. 17,'57

51. It shows condition of the entire Company at home and in New York. (*See answers* 27, 28, 29, 30, 31, 32, *of cross-examination.*) Statement of Aug. 17,'57

Statement of Aug. 17, '57.

52. It shows assets over liabilities to be $2,283,580 51.

Clerk of assignees, etc.

53. Since suspension, clerk of assignees and trustees except between Oct. 18, 1858, and June 25, 1859.

54. He has during that time assisted in examinations in New York and Cincinnati, to ascertain the condition of the Company.

55. As the result of such examinations, can give no opinion of the condition of Company on Aug. 24, 1857.

Circular Sept. 8, 1858.

56. On Sept. 8, 1858, the assignees issued a circular of the condition of the Company, which he assisted in preparing, and showed, he believes, about the condition. It shows a loss or excess of liabilities of $3,270,200 72. He gives Exhibit K, as a copy.

Claims Sept. 24, 1861.

57. Claims against Company up to Sept. 1861, admitted, amount to $1,096,220 20, for which certificates have been issued.

No interest.

58. No interest allowed on claims since Aug. 24, 1857, except on some of the accounts up to Sept. 1 or 5, 1857.

59. There are claims yet unadjusted.

Two dividends.

60. Two dividends of ten per cent. each paid on claims allowed.

Further dividend.

61. He thinks a further dividend of fifteen per cent. will be paid.

Time to close up.

62. It will take two years, in his opinion, to wind up.

63. New York Stock Ledger before him.

64. It shows stock in Ludlow's name, individually, and as cashier. Ludlow's stock.

65. Exhibits copy of account, showing stock in his name as cashier, "Exhibit L." Credit side shows transfers to him, and debit side from him. Shares 984. $98,400, on both sides. Stock in cashier.

66. Stock Ledger No. 3, before him. Ludlow's individual stock account begins January 1, 1850, and continues to August 18, 1857, when balances struck, showing to his credit 113 shares. Ludlow's stock.

67. Shares transferred to his credit in that time were 3,777. Ludlow's stock.

68. At New York office, transfer of stock closed some twenty days before dividends in January and July, and a list furnished to Cincinnati office. It showed stockholders at the time and shares held. Lists from December, 1855, to June, 1857, except June, 1856, before him.

69. All show stock in Ludlow's name, individually and officially, except June, 1857. Ludlow's stock.

70. The object of these lists to show to whom dividends payable.

71. Once in two years lists of stockholders in New York made up and sent out, to ascertain who were entitled to vote at elections. He has before him list of September, 1856.

72. In that list stock in Ludlow's name, as cashier and individually. Ludlow's stock.

Votes his stock.

73. The poll-book of election in 1856 before him, and Ludlow, individually, voted 117 shares.

Votes by proxy.

74. He voted by proxy. Charles Stetson cast his vote.

Gower loss.

75. He, as requested, exhibits copy of minutes of board of October 28, 1848, pages 319–320. "Exhibit M." (This is the matter of loans made at New York office and report of committee thereon, of October 27, 1848, it embraces the Gower loss, etc.)

Gower loss.

76. The list of debts stated in that report, $595,217 03, was in New York office.

Gower loss.

77. Does not know why transferred to Cincinnati office.

Gower loss.

78. They were charged to profit and loss. Collected from first item (Gower) $100,000, and second item (Dow and Johnson) $20,000.

Loans after that.

79. Loans continued in New York agency after above date.

No London credits.

80. After that date there were no London credits, to his knowledge, until after suspension; there was an account with Bell & Grant, of London, but he did not know its nature.

Deposits in N. Y.

81. Deposits received by New York agency at all times.

Interest 5 per cent.

82. Interest allowed. Rates, he supposed, under control of Cashier. He finds from letter of Stetson, President, to cashier in New York, dated April 26, 1854, he

was instructed to advanee rates of interest to 5 per cent. Copy of letter, "Exhibit N."

83. The semi-monthly statements of New York office for two years prior to suspension, show average of deposits in that office of about $2,000,000. Average deposits. N.Y.

84. At the home office about the same. Average deposits, Cin.

85. Stetson left for New York the Friday before suspension. Stetson goes to N. Y.

86. He was caused to go by dispatches from Coe. Why.

87. He remained till about November 23, 1857. Remains.

88. He corresponded with assistant cashier and Mr. Fosdick, President *pro tem.* Correspondence.

89. His correspondence laid before the trustees. Correspondence.

90. His correspondence is before him. Correspondence.

91. He exhibits copies of dispatches of August 24 and 26, 1857, Stetson's letters of August 24 and 31, 1857, and September 5, 18 and 24, 1857. Exhibit O, see them. (They show simply the necessity of suspension and conjecture as to causes, nothing more.) Correspondence.

92. The name of trustee approving loans written opposite each loan. Approving trustee.

93. But few had the signature of the trustee. They were principally in Ludlow's handwriting. Approving trustee.

94. Trustees had no means of knowing the trustees had approved except by the reports themselves. Approving trustee.

Report May 1, 1856.

95. He finds no action taken by trustees on report of May 1, 1856, but finds a letter of the President, dated May 15, 1856, to Ludlow, of which "Exhibit P," is a copy. (It approves of the suggestion and promises to conform.)

Report May 1, 1856.

96. The trustees, to his knowledge, sent to New York trustees no statement as requested in postscript of that report. Exhibit G. (It requests similar reports, that is all.)

No instructions.

97. After that report, home office, to his knowledge, gave Ludlow no instructions to cease making loans on railroad stocks and bonds.

Errors in N. Y. accounts.

98. The home office made acquainted by its correspondents of errors in New York accounts during Ludlow's time.

Errors in N. Y. accounts.

99. About May or April 1857 complaints frequent from Branches of State Bank of Ohio, principally; but through Andrews, President of Board of Control, learned they were all made satisfactory. (*See answers* 109, 110, *on cross-examination.*)

Errors in N. Y. accounts.

100. He gives copy of letter from Stetson to Ludlow of Nov. 12, 1855, marked "Exhibit R." (This letter advises Ludlow of the complaints, and directs their correction.)

Errors in N. Y. accounts.

101. He also gives copy of letter from same to same, of April 18, 1856, "Exhibit S." (This advises him, that he is pleased to learn his accounts satisfactory. It also speaks of stringency of market, and endeavors to lighten

up, and says they must arrange for telegraph in some way not to be so public. See letter.)

102. He also gives copy of letter from same to N. H. Wilson, President, dated Oct. 31, 1855, "Exhibit T." (This letter explains terms and conditions of loan authorized to be made in New York office, to Marietta & Cincinnati R. R. Co., which see. *See Ludlow's answer*, 81.) Loan to M. & C. R. R.

103. He gives copies of letters from Stetson to Ludlow, of Nov. 1, 1855, "Exhibit U," "Exhibit V."

104. No transactions between home office and Clev. & Pitts. R. R. Co. C. & P. R. R. Co.

105. He knows no connection between home office and that company, than through Gilbert & Johnson. Gilbert & Johnson.

106. There was a debt against them in New York office of about $60,000, as he supposed, since ascertained to be $42,000, or $43,000. From books and papers, he learns Gilbert & Johnson had a contract with the railroad company to furnish iron, and means were furnished them by Ludlow, to carry out that contract. What that was

107. The authority of Ludlow was a resolution of the board, of January 23, 1856, as follows: It had been recommended by the New York trustees and declined, but was reconsidered, and at last "*Resolved*, That the board believing the trustees residing east were in better position to judge of the expediency of granting the application of Mr. Gilbert, the same be referred for their action, with the recommendation, that it be carried out if in their judgment it can be done with entire safety to this Company, and What that was

that it is important to its interest in view of the existing liability of Mr. Gilbert to this Company."

What that was

108. Can not state the amount of credit agreed on.

What that was

109. They were charged a commission of one and a half per cent. on 6000 tons.

What that was

110. The advance on the contract was $60,000.

What that was

111. The credit to be given, as he understood, was for $300,000.

112. He refers to paper for last answer, as per copy. "Exhibit W."

Statement 17 Sept., 1857.

113. He exhibits a statement of Company, of Sept. 17, 1857, which shows its condition at close of Sept. 16, 1857. "Exhibit X," and a statement of Company of

Statement 26 Sept., 1857.

Sept. 26, 1857, showing its condition at the time of the assignment, as per "Exhibit Y." They will show what paid out between those dates.

Paid from 16 to 26 Sept., 1857.

114. They show paid and between those dates in trust department, $409,846 05, and in banking department, $576,084 21.

115. The assistant cashier at home office drew checks on New York office.

116. It was his business to examine semi-monthly statements from New York office, and when errors found, to correct them.

117. The items in New York statement, that represents

the balance due from home office is called "Office at Cincinnati."

118. Ludlow frequently requested them to withhold checks for a time, according to the state of the money market in New York.

119. He is requested to give copy of letter from Ludlow to Stetson, of May 5, 1855, and does it. "Exhibit Z." (This, letter will have the attention of the Court. It gives the condition of the New York office, and Ludlow's alarm at his condition, for the consideration of the President.)

120. He gives from statements balances due on first day of each month, from January 1, 1857, to August 1, 1857, to New York office:

1 Jan'y	1857,	$878,843 96.	1 Feb.	1857,	$660,346 30.
1 March	"	844,882 40.	1 Apr.	"	1,016,849 18.
1 May	"	907,014 89.	1 Jun.	"	582,416 40.
1 July	"	1,020,537 31.	1 Aug.	"	698,474 64.

121. He exhibits copy of letter from Stetson to Ludlow, of Dec. 2, 1856, "Exhibit 1." See this letter. (It tells what kind of paper is thrown out, and how desirable to do it; and wishes to know what can be done.)

122. He exhibits copies of letters from same to same, June 30, 1857, "Exhibit 2;" July 6, 1857, "Exhibit 3;" July 7, 1857, "Exhibit 4." (These letters are simply responsive to Ludlow's letters, asking for aid. The latter advises him of July dividend, 1857.

123. He points out loans in New York office from Jan. 1857, to Aug. 1857, to E. Ludlow, and the securities.

123½. He points out payment from statement on these loans.

124. He points out from same statement loans to trustees, clerks and employees, with securities.

Cross-examination by Worthington & Matthews, attorneys.

Certificates paid.

1. He states which of his answers in chief are from his knowledge, which from books and papers, which in part from both, and which mere opinions. He also states last payment of $75,000 (in answer 13 in chief), of $600,000 certificates, was April 30, 1856. Previous payments Feb. 18, 1854, $89,000; Feb. 28, 1855, $200,000; June 28, 1855, $88,000; January 18, 1856, 142,000; January 31, 1856, $6000, making $525,000.

No bad faith, etc.

2. While with Company, does not know of any act of bad faith or gross negligence, other than stated in former deposition before Master Straub.

Board met daily.

3. The board met daily to attend to business, first discounts.

Fin. Com., ex. dividends.

4. Before dividends, examinations made by finance com-

mittee; he gives reports for 1854, 1855, 1856, 1857, exhibits ~~100~~, 101, 102, 103, 104, 105, 106, 107, 108, showing what charged up to profit and loss, dividends recommended and surplus. That of July, 1857, showed surplus after dividend, of $200,657.05.

5. New York agency opened to center deposits in New York, to be used in the bill business at the home office. N. Y. agency for.

6. The bills purchased on eastern points sent to New York agency. They did not appear in accounts of agency till paid. These, with other securities held by agency, exceeded the sum due the agency. He gives amounts in 1857. Aug. 18, 1857, bills, $687,208.41; bonds, $230,000, making $917,208.41. (Aug. 16, 1857, due from Cin. $734,551.12.) Bills sent to N. Y. agency

7. When July dividend made, surplus $200,657.05, good. (See "Exhibit 108.") Of six months, surplus $25,711.64. Suspended debt $6[illegible]610.51. Before assignment, $27,330.57 paid, and collaterals taken, $11,310. Suspended debt consisted of discounts not paid at maturity, when deemed worthless charged to profit and loss account. July dividends 1857, etc.

8. The Company made yearly reports to Supreme Court, and gives reports of 1854 and 1856, Exhibits 109, 110. (These reports show the capital invested in real estate, and condition of the Company in other respects. The latter shows the $600,000, banking capital, paid by the department and dropt. Upon these reports the Court make no recommendations whatever.) Reports to Sup. Court.

9. New York agency known to Supreme Court, referred to by Reuben Wood, commissioner for 1848, in "Exhibit N. Y. agency known to Sup. Court.

111;" by M. Burchard, commissioner for 1849 in "Exhibit 112;" by T. L. Jewett, commissioner for 1850, in "Exhibit 113;" (we quote from it:—After referring to the regulations governing the agency, he says,—"Your commissioner has given much consideration to the question whether any additional safeguard could be thrown around the transactions of this agency, and upon mature deliberation he has arrived at the conclusion, that if those already interposed are not adequate to its protection and security, he is unable to suggest any of a higher character, that would insure its safety. Hence the question involves the existence of the agency itself, and whether it should be continued. The commissioner having stated the facts, does not feel called on for an expression of his opinion thereon.") And E. Hayward, commissioner of 1854, "Exhibit 114,"—he reports specially as to agency and management. He also reports the connection of the State of Ohio with the agency. "Exhibit 115." (He reports Company agent for the State, from 1839 to 1853, for payment of interest on State debt and keeping stock books. It was undertaken when State credit depressed, and but for aid at one time from it, the credit of State would have suffered.) (*P. S.* These reports were made to the subsequent terms of the Court—that of Hayward, to Dec. term, 1855, They will commend themselves to the Court.) He says, also, subsequent to Hayward's report, say in the spring of 1856, the State kept its accounts with the agency till suspension, and transfer agent of the State had a desk in its office.

Extract from Jewett's.

Jas. Lee & Co.

10. He is not aware the board of trustees knew of Ludlow's transactions with James Lee & Co. He gives con-

versations with Stetson as to his letter, and explains for what it was intended—simply to gratify the elder Lee. He finds nothing on the minutes in relation to it. The pencil mark at the foot of the letter indicates to whom he says it was shown.

11. Bell & Grant appears in statement, in August, 1856. Occasionally debtors, generally creditors. It appears "Bell & Grant, London." The statement book of New York agency kept in President's room, on table around which trustees did business. The transactions with Bell & Grant were not otherwise disclosed. He finds nothing on the minutes, nor their names mentioned. Bell & Grant.

12. After suspension, trustees acted cautiously, under advice of counsel. He is not able to give trustees' opinion, other than as given in preamble and resolutions of September 15, 1857, "Exhibit H," which is "Exhibit 116." His own belief Company was solvent, able to pay its debts, and leave 40 per cent. for stock. Suspension.

13. Assignment ordered in consequence of suits, attachments, judgments, etc., to afford protection to those who did not resort to such measures. Why assignment.

14. It was withheld because a settlement could be better adjusted by those familiar with its affairs. Why withheld

15. He is not aware trustees in Cincinnati had knowledge of Ludlow's operations not in accordance with his instructions. They were frequently in New York, and in the office there, and he never heard that there was anything wrong. Ludlow's acts not known.

16. There was nothing calculated to excite suspicion from reports of New York office, prior to telegraph, in August, 1857, to Mr. Stetson.

As to capital.

17. The means of trust department used in banking department, except as checked out by it.

As to capital.

18. He gives statement of investments over $1,259,118 15, mentioned in answer 7 in chief, as invested in real estate, etc., to amount to $1,729,901 52. The banking house cost, $243,603 20. The amount of real estate security in the $1,729,901 52, he is not able to give.

Not familiar with T. D.

19. He had no charge of trust department, and not familiar with its details.

Cin. trustees relied on N. Y. trustees.

20. The Cincinnati trustees relied upon trustees in New York giving the necessary supervision to New York office.

Gilbert & Johnson.

21. He gives the vote on the Gilbert & Johnson resolution, of January 23, 1856, given in answer to question 107 in chief.

Trustees when elected.

22. He gives the times of election and re-election of trustees.

Registrar of stocks.

23. Registrar of stock appointed in New York, under resolution of March 20, 1856, and G. S. Coe appointed, and duties defined. Gives copy of resolution.

Loan book in 1857.

24. The loan book of New York agency shows loans, on April 22, 1857, $497,977 62; on April 1, 1857, $1,069,448 20; on May 1, 1857, $646,040 44; on August 24, 1857, $835,153 50. From examination of

these books, loans reduced from April 1 to 22, $571,470 68. Some accounts thus paid re-appear on August 24, 1857, and were disputed. On investigation subsequently, found incorrect. He gives instances.

25. Committees to examine New York agency; one reported July 11, 1843, "Exhibit 117;" and one October, 1848, "Exhibit 118;" and agency continued after these. Examinations of N. Y.

26. Majority of stock held East. He gives extract from meeting of stockholders of September 28, 1854. "Exhibit 119." (This relates to the tax question, and recommends winding up in case no relief can be had from the legislature.) Under resolution of May 19, 1851, notice was given, in April or May, 1852, that debts secured by mortgage would be called in. Copy of resolutions, "Exhibit 120." It was given in consequence of tax question, which was settled in July, 1854, see "Exhibit 121." Taxes, etc.

27. The assets of Cincinnati office, exclusive of its assets in New York office, on Aug. 17, 1857, were $1,431,308 11; its liabilities, exclusive of liabilities to New York office, $2,364,060 75; its assets in New York office, $869,208 41; its liabilities to New York office, $652,895 26. Assets, etc.

28. The assets of Cincinnati office at assignment, exclusive of assets at New York office, $1,104,372 03; its liabilities, exclusive of liability to New York office (it then being debtor to Cincinnati office), $805,996 05. Assets, etc.

29. Cincinnati office paid liabilities of said office and liabilities of New York office, $2,863,855 22. In these payments, used assets in New York office to $687,208 40. Debts paid.

Debts paid.

30. It paid debts of New York office, $1,691,545 31, and had assets in that office, besides assets attached at various places out of the State, by New York creditors, $182,000.

Liability at suspension.

Assets, etc.

31. Liabilities of Cincinnati office at suspension, $3,016,956 01; liabilities of New York office at suspension, $3,199,128 80; assets of Cincinnati office, $5,300,536 53; assets of New York office, $3,092,774 55. From the best opinion he could form, Cincinnati would have paid its debts and stockholders, and had a surplus. The assets of New York office represented at $3,092,774 55; but its liabilities increased from improper use of collection paper and securities of correspondents, to an amount exceeding the above estimated value. Can not say what per centage it will pay.

If N. Y. paid, what.

32. If New York office could have paid its debts, Cincinnati office would have had for stockholders, $2,171,921 29.

Ludlow.

33. Ludlow appointed cashier February 14, 1855. He was connected with the New York office almost from its establishment. He was appointed assistant cashier for New York office December 20, 1852, for reasons stated in Stetson's letters of December 6 and 15, 1852, "Exhibit 122," "Exhibit 123;" and same feeling existing, he was appointed cashier on Rockwell's resignation. (These letters will be read by the Court. The board of trustees were fully justified, upon those letters, in appointing Mr. Ludlow cashier upon Rockwell's retiring.)

Examination in April, '55.

34. The President's last examination of New York office, 2d April, 1855, as per his report, "exhibit 124." (This is

satisfactory. It explains why Carr authorized to sign checks, which see.)

35. In his answer of assets above, he does not include New York collections, nor do the reports specify them. Collections, not assets.

36. At Cincinnati the collection paper not included in assets, but returned to owners. Cincinnati collections, not assets.

37. In New York office, $145,014 96 of collection paper taken by sheriff; the balance, to amount of $1,269,975, had been pledged by cashier, for loans obtained from banks and bankers in New York. N. Y. collections.

38. Of these transactions, trustees in Cincinnati had no knowledge. No authority given to so use such paper. Trustees ignorant, etc.

39. He so disposed of collaterals and securities held by him, and securities deposited for safe keeping, without the knowledge of the trustees. Gives instances, as sixty bonds of Little Miami Railroad Company, and three hundred bonds of Cincinnati, Hamilton and Dayton Railroad Company. These latter belonged to an association, of which he was one. The Company's bonds, $230,000, went in the same way, and also others. Collaterals in N. York.

40. In his answer to cross-question 39, he spoke of three hundred bonds of the association. After suspension these bonds found pledged for loans by Ludlow. The box containing them had apparently been forced open. These bonds were thus used, without the consent of C. J. Stedman, who had control of them, or trustees. Box broken.

41. He can not explain in what way the trustees could protect the Company against such an officer. The trustees No guard against him

had full confidence he would obey his instructions, and was faithful and competent.

No change less secure.

42. There was no change, less protective after Ludlow's appointment than before, as a comparison of instructions will show, given to Vermilye, Coe and Rockwell. "Exhibit 125," "exhibit 126." (These exhibits the Court will examine and compare with Ludlow's instructions in resolutions of 14th February, 1855, transmitted to him with his appointment, in answer 17 of S. P. Bishop in chief. The instructions to Ludlow, as assistant cashier, refers him to Rockwell's instructions, which the Court will find well guarded, but not so much so as the instructions to Ludlow, on his appointment as cashier, 14th February, 1855. He also had the instructions to Coe and Vermilye for his guidance and direction, and so far as rules and regulations could be of service, they seem to be given in these continuous streams of instructions.) "Exhibit 127." *He had also resolutions of* 1843.

Gower loss.

43. The loss of A. A. Gower & Nephew, of London, was caused by indorsement of cashier in New York office, of foreign bills upon said firm, without the knowledge of the trustees or officers of Cincinnati office. This was changed, as will be seen by "exhibit 127," instructions to Vermilye, in reference to such bills. (*Never altered.*)

Gower loss.

44. The Gower loss of $437,115 20 was charged to profit and loss, between 31st October, 1848 and 31st October, 1849. Before suspension nothing realized from it.

Gower loss.

45. In making statement for July dividend for 1857, no estimate was made of this claim against The Merchants

Insurance and Trust Company of Nashville, or its stockholders.

46. In settling with State Banks of Ohio and other bankers, it was for cash balances, as shown by their books, and not for collection paper. State Banks, etc.

47. These settlements were made in good faith, believing the collection paper would be reclaimed, and Company pay all its honest debts. State Banks, etc.

48. He was in New York agency from 25th November, 1857, till 23d January, 1858, assisting assignees. From examinations he made, great discrepancies appeared from statement of 16th August, 1857. He instances that of Baker & Co., stated at $144,105 82, was found to be $312,380 82. Dennistown, Wood & Co., stated $129,759 88, was found to be $216,095 48, and Ocean Bank, stated at $70,000 was found to be $140,000; and the following debtors became creditors, to-wit: N. Y. discrepancies.

W. Hoge & Co. debtors $53,667 18, became creditors $182,145 85.

Bell & Grant debtors, $119,304 59, became creditors, $254,792 44.

Prime & Co. debtors, $81,571 09, became creditors, $90,000 00.

Strachan & Scott debtors, $7,823 69, became creditors, $25,000 00.

Many of the debtor accounts were found wholly incorrect and assumed by Ludlow.

Cross-examination by M. E. Curwen for N. Wright.

49. He says N. Wright, trustee, when Ludlow elected, 14th February, 1855.

50. N. Wright not present at his election according to minutes.

51. N. Wright resigned 12th September, 1857.

52. N. Wright resigned by letter, as per "exhibit 128," a copy.

53. It was received as per pencil at foot, at four o'clock P. M., on day of date by S. B. Keys and J. C. Wright.

54. There was a meeting of the board that afternoon, Keys and J. C. Wright present.

55. In 1857, N. Wright deaf, and could not hear ordinary conversation. Matters were explained to him in a high tone of voice at the board. N. Wright told him, he could not hear ordinary conversation. This was in 1857, and he gave that as a reason why he did not come oftener. He was aware of Mr. Wright's deafness for seven or eight years. It was difficult to make him hear.

56. He was not on any standing committee; can not say what service was expected from him.

57. N. Wright not in Cincinnati at time of suspension. He was present at meeting of the board, 4th September, 1857.

58. He explains his indebtedness, $5,000 on stock, $14,000 00 on real estate.

59. He explains entry of 27th August, 1857, in relation to the $14,000 debt.

60. When that debt arranged, he was absent from the city. He did not transact the business, it was done in Trust Department.

61. He explains as to three drafts, of $100 each, to N. Wright, of 24th August, 1857, they were purchased prior to suspension, in regular course of business.

62. He finds them canceled 31st Aug., 1857, but does not know by whom presented.

63. The note for $1,500, dated 8th June, 1857, and $1,000, dated 15th July, 1857, discounted for N. Wright, jr., and passed to his credit.

64. His duties as assistant cashier governed by by-law 7.

65. He had been assistant cashier fourteen years, and full knowledge of his department, and general knowledge of trust department. Cashier, how long, etc.

66. The President better informed as to the general business; the Secretary as to trust department; and Cashier as to New York agency.

67. Prior to 1857, his knowledge of bookkeeping quite limited. Bank accounts simple, and with them he had been conversant for twenty-one years prior to 1857.

68. He kept general supervision of those under him; not absent his whole fourteen years 3 month.

69. Between 1852 and 1857, knows no one retained reported guilty of neglect in the employ of the Company.

70. He finds no committees appointed between 1850 and 1857, under 12th by-law; finds Stetson, Luckey and Fosdick acted as committee of finance.

71. He names committee of finance in his answer 70 above.

72. Luckey trustee from 1834; Fosdick from 1836; and Stetson from 1840.

73. He examines minutes from July, 1851, to July, 1857, inclusive, at pages shown, and finds dividends made upon examination and report of committee of finance. The amount dividend controlled by vote of the board.

74. From 1852 to 1857, he can not state he was called on by committee of finance. The general bookkeeper, Mr. Lyle, gave them the figures.

75. As an officer of fourteen years' standing, he says nothing in the reports that would suggest the necessity of further inquiry.

76. He has examined reports back to 1854, and, as a bank officer, would feel justified in declaring dividends to the amount declared.

77. In all cases the dividends met his approval, and he mentioned no disapproval to N. Wright, or any one.

78. He is asked to explain his answer 7 in chief. He says he explained it in his answer to cross-question 18. The railroad bonds secured by mortgage on railroads.

79. No losses, to his knowledge, from such investment.

80. He is referred to answer 18 in chief, and asked the prominent stockholders in New York from 1853 to 1857, and stock held by them. He answers W. B. Astor, stock held 226 shares, and others, giving shares held.

81. In the published reports, there was no concealment of the two loans, amounting to $600,000. They appeared in banking department as capital, and trust department, as certificates of deposit.

82. He can not state whether certificates taken up had been repaid from loans or profits. They were taken up at New York office. At suspension, outstanding in twenty years' certificates, $96,380, given in part extension of $600,000.

83. The semi-monthly statements sent from New York professed to be transcripts of balance in ledger, and represent state of accounts there.

84. It was not his duty to examine these statements; it was the president's duty. He did examine them when handed to be copied into statement book.

85. When received, they were copied in statement book, and lay upon table of directors, and examined by some of them: Stetson, Fosdick, Parkhurst, Broadwell, Taylor, and Dietrich more frequently than others.

86. There was nothing in them that called for investigation or further examination.

87. He relied upon them as correct.

88. He has had no occasion to change his opinion as to their reliability.

89. After the failure, he found the statement last given not correct. This he ascertained from his own examination.

90. His attention is drawn to answer 29 and 32 in chief, in relation to Ludlow's reports being in accordance to instructions in resolution of February 14, 1855, p. 502 of minutes, when they were received from 1855 to 1857, inclusive; he noticed nothing omitted, and made no communication to any one, none to N. Wright.

91. His attention is called to his answer 29 in chief, in which he states what he discovered after suspension. He says he discovered on his visit, in November, 1857, to New York, that the books appeared regular enough, but facts not as stated.

92. With mere exceptions in details, "Exhibit F," in answer 33 in chief, found generally correct.

93. Loans to trustees were treated like other loans, and no distinction in regard to renewals. There was some differences in the board as to meaning of 17th section of charter—some claiming it gave a right to $25,000, and others only $20,000.

94. C. Stetson's debt not known to N. Wright.

95. Blanks printed for reports, in the column headed "approved;" some have the name of approving trustee in his own handwriting, while others appear in Ludlow's, without any attempt at imitation.

96. At the home office, Ludlow's reports were taken as true until after the suspension; after that, when they found the books false, they made outside inquiries.

97. From Ludlow's appointment as assistant cashier, in December, 1852, to August, 1857, he had no cause to distrust him, and made no communications to N. Wright on the subject.

98. The statement of the condition of the Company on August 17, 1857, was made by Mr. Luckey from the books, and he believed it, at that time, to be correct, and signed it as assistant cashier.

99. He was not present at meeting of the board on August 24, 1857. He heard no expression of doubt as to the solvency of the Company. They expected aid from the city banks, and to go on next day. In consequence of their refusal, the suspension took place.

100. He believed, at time of assignment, creditors would all be paid, and 40 per cent. to stockholders; and until making up report, published by assigners in September, 1858, he was not satisfied fully but that creditors would be paid in full.

101. He gives the purchases and sales of the Company's stock by Ludlow, from January 1, 1855, to August, 1857, and the stock in his name on dividend days.

102. He is aware Vermilye resigned in consequence of the Gower loss.

103. Date in answer 79 in chief alluded to, is October 28, 1848.

104. Prior to fall of 1854, railroad bonds and stocks considered available security to loan on, at 10 or 15 per cent. margin; subsequently, such as paid dividends and paid interest on bonds. He does not know custom of banks. The Company kept up its usual line of discounts, and made loans in Cincinnati on railroad securities. From common reputation, incorporated banks had ceased, before 1857, the practice; others loaned on them. State stocks and stocks of other incorporations in more favor in 1857.

105. Between January, 1851 and 1853, he finds loans at home office on railroad securities amount to $154,500.

106. He calls his attention to several loans, 1855. He says they were safe loans, and on railroad securities, and no loss from them.

107. He called his attention to investments in bonds, and stocks, and says they were good and no loss from them.

108. His attention is called to answers 98 and 99 in chief, and he is asked, who kept the books of the agency at the time of these complaints, he said Ackerman. He

was considered competent, and recommended by Winslow Perkins as he understood.

109. He produces letters from J. Andrews, President of State Bank of Ohio. Copies, "exhibit 129."

110. He is asked what measures were taken, and referred to letters from Stetson to Ludlow, 25th March and 12th April, 1856. "Exhibits, R. and S."

111. Mr. Stetson called the attention of the board to these complaints. Does not know N. Wright to have been present. They were considered errors incidental to large business, and not as indicating want of integrity or capacity.

112. Does not know that exhibit W was ever seen by N. Wright, or before the board of trustees.

113. He does not know what action trustees in New York took upon the resolution of 23d January, 1856, referred to in answer 107 in chief, but gives copy of Ludlow's letter of 19th April, 1856. "Exhibit 130."

114. N. Wright voted in the negative on that resolution.

115. The balance reported by him in his answer 120 in chief, occasioned by drafts drawn by him on New York agency.

116. All drafts for last eight years on New York agency at sight.

117. He considered it prudent to draw as the means of

home office always sufficient to protect its drafts on New York office.

118. The means of the home office consisted of bills and railroad bonds, given in a previous answer.

119. In answer to question 123 in chief, he stated the loans by Ludlow to himself, and says in his reports no returns made to home office of these loans.

120. These loans were unknown to him prior to 24th August, 1857, and he made no mention of them to N. Wright.

121. In their drafts on New York, they calculated upon deposits, as well as the means of home office. Many western banks were required by their charters to keep funds east, or specie to a certain ratio of circulation, this made a fund in New York, which they relied on in case bills not paid.

122. His attention called to his answer 118 in chief, and says he means they were to draw less freely.

123. He explains what he means by the state of the money market. The scarcity of money in New York would affect the west, and occasion drafts on the agency; and Ludlow being in New York would have better information than he would.

124. Assuming the drafts on New York did not exceed average deposits there, and regular payments on bill remitted, there could be no effect in drawing up to that limit than to place under the control of the home office all the available means of the Company.

125. The gross amount of deposits from 1853 to 1857, averaged yearly about $75,000,000.

126. The amount of discounts same period yearly, about $10,000,000.

127. The bills remitted yearly the same period to New York, from $10,000,000 to $12,000,000.

128. The drafts about same as remittances.

129. The number of officers in Cincinnati office for same period, from 20 to 25, president, secretary, assistant cashier, ten book-keepers, four tellers, one discount clerk, and four messengers.

130. These officers were habitually at the bank, and the same persons retained a number of years. Secretary had been with Company twenty years, one book-keeper fifteen years, discount clerk ten years.

131. Of trustees, president, Fosdick, Taylor, Dietrich, Parkhurst and J. C. Wright, attended most frequently.

132. J. C. Wright attended frequently, daily when well and in town.

133. Minutes from 27th August to 18th September, 1857, in handwriting of secretary, but signed J. S. Broadwell, assistant secretary; after that signed by Mr. Rice, secretary. His duties were such, he was not present at those dates. He was called in occasionally for consultation. Memoranda of Broadwell as secretary *pro. tem.*, recorded by Mr. Rice, and so stated.

134. He is asked to examine minutes of meeting of the board of 15th, 24th and 26th September, 1857, and say if N. Wright was present. He says not.

135. He is asked to examine the minutes prior to 12th September, 1857, on any days except some stated, and say if N. Wright was present. He says not.

136. When "Wright" appears in minutes, it is J. C. Wright.

137. He knows no losses from transactions on days N. Wright was present.

138. N. Wright not present when Ludlow elected cashier.

139. N. Wright's securities ample, and no loss on them.

II. DEFENDANTS' TESTIMONY.

I. The account upon which the plaintiffs' obtained their judgment against The Ohio Life Insurance and Trust Company at the February Term, 1858, of the Court. It shows as follows, to-wit:

1. That Bell & Grant, on the 24th August, 1857 (the day of the suspension), paid five bills of E. Ludlow, cashier, on them drawn, dated 10th-11th August, 1857, for £20,000. To enable them to do so, they drew upon him at sixty days for £10,000, which was protested, and damages for £1,000. They paid on 29th August, 1857, two bills of E. Ludlow, cashier, on them drawn, dated 13th August, 1857, for £10,000, and on 31st August, 1857, four bills

drawn, dated 17th-19th August, 1857, for £27,000; against these they re-drew two bills, one for £5,000, and one for £3,500, which were protested, and damages claimed, £850.

2. That they balanced their account on 30th June, 1857, finding E. Ludlow, cashier, debtor £10,489 6, and that their account, stating with that balance, by November 2, 1857, increased to - - - £176,442 1 8

With a credit, per contra, of - - 123,360 6 6

Leaving due them, per balance, - - £53,081 15 2

II. The resolutions of the 14th February, 1855, showing the regulations adopted for the government of the New York agency, as given by Mr. Bishop, in answer in chief 17 of his second deposition; the appointment of Ludlow as cashier, and order of the board as to the notice to be given to him of his appointment, and of said resolutions.

III.—The letter of Mr. Stetson, of the same date, to Ludlow, notifying him of his appointment, and of the action of the board of trustees of that date.

IV. Ludlow's letter of 19th February, 1857, acknowledging the receipt of Mr. Stetson's letter of 14th February, 1857, etc.

V. The resolution of the board of trustees of 20th March, 1856, appointing G. S. Coe registrar of the Company's stock in New York, and defining his duties, etc. This resolution is given in Bishop's cross-answer 23 in his second deposition.

VI. The letter of Mr. Stetson to Ludlow, advising him of the appointment of a registrar, and transmitting to him the resolution of 20th March, 1856, relative thereto.

VII. The entry made in this case, January 1859, is as follows, *inter alia*, to-wit: "In this case it being shown to the Court, that by consent of the creditors, who instituted proceedings in the Superior Court of Cincinnati, and of the creditors represented in this Court, an

amicable adjustment has been had, in virtue of which the administration of the assets of said Company is to be transferred to two trustees, and the litigation in both said Courts touching the administration of said assets, is agreed to be discontinued;" and thereon leave was given to plaintiffs to amend their said bill, so as to waive so much thereof as calls for an account against said assignees, and seeks the appointment of a receiver and the administration of said assets by this Court; and it was further ordered, that Kilbreath, who had been appointed a receiver, be discharged from the further performance of his duties as a receiver.

VIII. On Oct. 14, 1858, Spinning & Brown filed their bill against The Ohio Life Insurance and Trust Company, Charles Stetson and others, in the Superior Court of Cincinnati, No. 9776, for the purposes therein set forth, and thereupon such proceedings were had, that at the general term of said Court, in January 1859, James P. Kilbreath and Charles Remelin were appointed receivers of the assets and property of The Ohio Life Insurance and Trust Company, and the said Charles Stetson and others, assignees, were directed to execute and deliver to them, for the benefit of all concerned, a deed conveying to them in trust, all the real and personal property, assets and choses in action, that were assigned to them by the deed

of Sept. 26, 1857, as the same remained in their hands under said assignment, etc.

IX. In pursuance of said order, Charles Stetson and others, assignees, executed and delivered to the said receivers, a deed, as therein directed, in due form of law dated 1st day of February 1859, and recorded in Book No. 250, page 203, Records of Ham. county, Ohio.

X. We next give a statement from the books of the Cincinnati office, showing the balance due by it to the New York agency, on July 1, 1857, to be $882,506.70, and the daily remittances to, and checks upon the agency, from July 1, 1857 to Aug. 24, 1857, inclusive, and the balance due to the agency on Aug. 24, 1857, to be $511,764.03, as follows, to-wit:

New York Agency.

Dr. | *Cr.*

1857.					1857.				
July	1	To cash	$36,560	08	July	1	Balance	$882,506	70
"	2	"	33,695	47	"	1	By cash	52,842	50
"	3	"	28,143	83	"	2	"	37,847	00
"	6	"	133,776	62	"	3	"	44,475	61
"	7	"	44,145	27	"	6	"	41,157	49
"	8	"	29,963	10	"	7	"	43,211	45
"	9	"	33,559	94	"	8	"	26,664	16
"	10	"	26,896	45	"	9	"	27,644	15
"	11	"	37,876	18	"	10	"	27,815	81
"	13	"	74,736	24	"	11	"	47,665	55
"	14	"	69,851	49	"	13	"	44,449	08
"	15	"	38,414	28	"	14	"	27,489	90
"	16	"	41,387	63	"	15	"	61,600	43
"	17	"	44,318	88	"	16	"	15,489	80
"	18	"	37,506	78	"	17	"	43,731	08
"	20	"	106,063	32	"	18	"	24,084	79
"	21	"	34,920	88	"	19	"	34,351	22
"	22	"	16,398	94	"	20	"	13,081	89
"	23	"	21,665	62	"	22	"	25,928	12
"	24	"	11,094	51	"	23	"	13,346	46
"	25	"	8,408	88	"	24	"	28,876	58
"	27	"	85,974	63	"	26	"	27,494	46
"	28	"	46,432	20	"	27	"	42,412	86
"	29	"	23,798	93	"	28	"	25,964	72
"	30	"	12,088	04	"	29	"	20,626	61
"	31	"	38,807	29	"	30	"	9,019	81
Aug.	1	"	33,979	88	"	31	"	32,188	36
"	3	"	117,956	93	Aug.	1	"	59,955	21
"	4	"	17,143	62	"	3	"	40,862	24
"	5	"	5,579	60	"	4	"	20,063	05
"	6	"	28,627	99	"	5	"	21,697	54
"	7	"	22,093	71	"	6	"	30,261	21
"	8	"	16,843	57	"	7	"	31,461	81
"	10	"	80,221	95	"	8	"	33,037	68
"	11	"	6,329	94	"	10	"	31,779	84
"	12	"	26,924	97	"	11	"	20,158	65
"	13	"	3,793	20	"	12	"	25,600	25
"	14	"	3,493	61	"	13	"	13,322	54
"	15	"	8,067	76	"	14	"	29,544	30
"	17	"	45,386	25	"	15	"	74,953	21
"	18	"	30,396	73	"	17	"	31,519	70
"	19	"	15,071	67	"	18	"	16,156	30
"	20	"	7,135		"	19	"	10,507	20
"	21	"	18,698	57	"	20	"	20,327	95
"	22	"	54,225	29	"	21	"	13,760	05
"	24	"	108,453	79	"	22	"	15,026	73
					"	24	"	17,071	59
							Balance	$511,764	03

XI. The defendants also present to the Court a transcript of the entries of the Supreme Court of the State of Ohio, upon the yearly reports of The Ohio Life Insurance and Trust Company, and upon the reports of the commissioners appointed by the Court thereon.

POINTS OF ARGUMENT FOR DEFENDANTS.

I. CAN THE PLAINTIFFS BE RELIEVED?

I. The plaintiffs are aliens. By their bill, they seek relief for themselves in their own right, or in the right of another,—The Ohio Life Insurance and Trust Company, against the defendants for neglect of duty in their office as trustees of said Company, or they seek relief for themselves and others.

II. They have no right, as aliens, to invoke the aid of this Court, except to settle their own controversies with citizens of some one or more of the States within the jurisdiction of this Court.

111 Article of U. S. Constitution, sec. 11, sub. 1.
4 Cranch Rep. 306.
5 Cranch Rep. 303.
2 Peters Rep. 136.
12 Peters Rep. 59.
2 Howard Rep. 9.
16 Howard Rep. 104.

III. The Ohio Life Insurance and Trust Company had no right to sue in this Court, nor have its assignees, or the receivers, to whom they have made a transfer; and if the purpose of the plaintiffs be to enforce the rights of the said Company, and through them their own, then this Court can not entertain the case, because they can come here only to maintain their own controversies against a citizen, and not for a citizen of the States. So far, then, as this bill seeks relief for such purposes, and through such a channel, it can not be granted by this Court.

IV. If the plaintiffs seek relief upon their own merits, *per se*, then it can not be granted for the following reasons, to-wit:

1. This Court exercises jurisdiction in chancery, according to the known usages of Courts of Chancery in England, and not otherwise, except so far as modified by statute law.

3 Wheat. Rep. 212.
4 Wheat. Rep. 108.
9 Peters Rep. 632.
13 Peters Rep. 195.
24 Howard Rep. 159.

2. At law the plaintiffs can maintain no action *ex contractu* against the defendant trustees, for want of privity; nor *ex delicto*, as the injury to them is not direct, but consequential. The action lies only in the name and on behalf of The Ohio Life Insurance and Trust Company, with whom there is privity, and to whom the injury was direct and proximate.

12 Metcalf Rep. 371.
11 Pick. Rep. 527.

3. The plaintiffs are allowed to come into chancery for fraud, through the corporation, when it having a subsisting cause of action fails to bring it, or is controlled by those complained against; but they have no right to come in on their own hook, as they would simply be asking the chancellor for relief, not *per causa proxima*, but *per causa remota*, for which he no more grants relief, than a Court of law.

Cases in point for defendants, XI.

4. At the time of filing this bill all the rights of the corporation had passed from it, and vested in others, who alone had the title and right to prosecute this action; and the title and right they had by deed under an order of a competent Court, have passed from them and vested in the

receivers of that Court, who alone can prosecute the action, for the uses of their appointment.

8 Howard Rep. 108.
14 Howard Rep. 368.
17 Howard Rep. 157.
18 Howard Rep. 503.
23 Howard Rep. 106.
10 Howard Rep. 56.
20 Howard Rep. 584, 607.
14 Peters Rep. 67.

V. If the plaintiffs as judgment creditors of The Ohio Life Insurance and Trust Company seek relief through the rights of that Company, then it can not be granted, because at the time of the bill, that Company had no such rights to be enforced. By the assignment of Sept. 26, 1857, it transferred all its rights of action to the assignees, and they, by the order of the Superior Court of Cincinnati, transferred the same to the receivers, and there they now rest, if ever they existed, unless lost by the lapse of time.

Point IV above.

VI. The plaintiffs are chargeable with notice of the powers conferred upon the corporation, its trustees and its agents. The cashier in New York was not a general, but a special agent, and his authority to deal with them in exchanges, they were bound to ascertain and to know.

Points for defendants, I, II, III, IV.

VII. The evidence in the case is satisfactory as to the powers of Ludlow. It shows he had no such powers. The resolutions of February 14, 1855 (in answer, in chief, 17, Bishop's 2d deposition), gives no such powers. The instructions to Rockwell, of Dec. 31, 1852, to which Ludlow, as assistant cashier, was referred, prohibited the New York agency from coming under any liability on sterling or other foreign bills by indorsement or otherwise, except on those that might come under its charge direct from the Cincinnati office. And if any were received from correspondents for sale, they were to be disposed of on their own merits, without any liability on the part of the Company; and if for collection, the cashier was to act under the advice of the resident trustees in New York. Similar instructions had been given Coe and Vermilye; and such had been the settled policy of the Company from the

year 1847, and of which Ludlow was fully advised. Nothing in the resolutions of February 14, 1855, changed this policy a hair's breadth. On the contrary, the dealing in foreign exchange is entirely without the pale of these resolutions. Exhibits 126 and 127 in Bishop's 2d deposition.

The letter to James Lee & Co., of Dec. 19, 1856, gives no authority to Ludlow, and none to plaintiffs. Neither knew of it, and neither acted under it. Exhibit C, in Bishop's 2d deposition.

The letter to Ludlow of June 29, 1857, neither gives nor recognizes such authority. It contemplates simply the sale of exchange, that might be obtained from James Lee & Co. But if it gave such authority, the plaintiffs never saw it and never acted upon it. Exhibit B, in Bishop's 2d deposition.

VIII. The plaintiffs' have thus contributed to their own loss, by embarking with Ludlow in an unauthorized business, and hence have no right to come into this Court to be relieved from the consequences of their own wrongful act. They must come here with clean hands.

Points for defendants, V, VI, VII, VIII.
12 Ohio State Rep. 569.

IX. The plaintiffs must recover, if at all, upon the case made by their bill and sustained by their proofs. Their claim arose from the acceptance and payment of Ludlow's last eleven bills, commissions and charges, after August 10, 1857. They have no right to ask the aid of this Court to subject to the payment of their claim the liability of the trustees or officers of the Company for mismanagement of its affairs to its creditors, prior to the time of the acceptance of these bills, or prior to the grant of authority under which they were accepted, and upon the faith of which, they passed into the hands of third parties and were paid. A trustee or officer can not be liable to any one, as a creditor of the corporation, if there be such a liability at all, for malfeasance or nonfeasance in office, unless he be such creditor at the time the liability accrues. One who becomes a creditor after default, can not charge it as a wrong inflicted on his rights, because his rights arise after the injury. The dividend of July, 1857, if wrong, was no injury then to the plaintiffs upon their claim now asserted, because they then had no such claim. It in no way, when declared, affected any right they had, and was not in any sense to their prejudice. And so of other matters complained of.

X. The plaintiffs being aliens are permitted to sue in this Court, on their own behalf. No right is granted to them to sue for another, and certainly not for another on an independent claim, when he is not permitted to sue. So far then as this bill purports to be brought for others, who may join in its prosecution, it is of no force, and it must be taken as a bill simply on behalf of the plaintiffs themselves; and if the points above made be well taken, the bill can not be maintained, whether you consider it a bill to enforce the rights of the plaintiffs alone, or a bill to enforce their rights against The Ohio Life Insurance and Trust Company, and through its rights, if any, against the defendant trustees, for the negligence charged in the bill.

II. IF THE PLAINTIFFS CAN BE RELIEVED, DO THEY MAKE A CASE?

I. The plaintiffs must have relief, if at all, according to the case made by their bill, and established by their proof. They claim the defendant trustees have been guilty of "gross neglect and want of ordinary care," in the supposed particulars enumerated in the bill. The mere charge of gross neglect and want of ordinary care would not be enough, the particulars, in which such neglect and want of care consist, must be stated sufficiently; and, as stated, established by proof to entitle them to relief sought. It is not enough to make general charges. 4 Metcf.

Rep. 111, 17; Wend. Rep. 556, 557. The injuries complained of must be injuries to the plaintiffs, or injuries they have a right to enforce, and so averred and so proved.

II. The several charges in the bill next demand our attention. Are they sufficiently stated? And if so, do they authorize the relief sought, and are they proven? We shall take them in their order.

1. The first charge is—the trustees failed to make the examinations required by the by-laws and rules, without stating what they required. Does the bill sufficiently show these failures, or wherein they injured the plaintiffs, or the corporation? The charges should have been specific, so as to show the duties omitted and the injuries inflicted. In this respect the bill is a failure, and the proof also. In truth, we may aver, with much confidence, no examination contemplated in the organization of the Company in its charter, by-laws or rules has been omitted according to the long established usages of the Company, under the sanctions of the Supreme Court of Ohio. We look in vain through the mass of proof taken to find any violation of duty upon the part of the defendant trustees under this charge in the bill, that has been productive of injury to the plaintiffs, or to the corporation.

2. The second charge is—the trustees have made, upon insufficient securities, large advances to railroad companies,

and individuals, and in modes and ways not authorized. Here again, no particulars are given by the bill, nor are they presented by the proof. The charge is broadly made without any reference to any particular period or any particular department or office, and we are at a loss to know from the proof, what transactions are intended to be reached by the charge.

It possibly may be said the capital has not been kept invested as directed by the charter and by-laws. In consequence of the tax difficulties with the State, in the years 1851, 1852, 1853, and 1854, the Company was preparing to wind up, and its capital invested in notes and mortgages, as it came in, was not reinvested in the same way, but went into other channels of business. This was reported to the Supreme Court and not disapproved, and no loss nor injury has resulted to any one from this course of policy. The proof certainly fails to establish any loss or injury from this course of policy.

The investments, at all times, when made, were upon adequate security; and whether so or not, it was a matter of judgment or opinion exercised at the time in good faith and with due care; and the error, if any, gives no cause of action to the plaintiffs.

There are no particular investments pointed out by the bill, or by the proof as made by the defendant trustees in bad faith, or without proper care at any time, either before or after the plaintiffs connection with the Company through its office in New York.

Upon this charge, broad as it is, no case is or can be made that entitles the plaintiffs to any relief against the defendant trustees.

3. The third charge is—that dividends were made with-

out proper examinations. When, or how many is not stated, and no particulars are given. The board of trustees, in the declaration of dividends, very properly, as prudent men, relied upon the report of the finance committee, and it was equally proper for that committee to rely upon the reports of the officers of the Company, in the absence of any cause to act otherwise. So far as the proof goes, there is no case made here. There is no proof that a single dividend was ever made except from profits, after a full examination and report by the committee having the matter in charge. Even the July dividend of 1857, seems to have been so made, after due care and consideration. But whether it was so or not, the bill and proofs make no case against the defendant trustees for gross negligence or want of ordinary care in their declaration, and for that only does this bill seek relief.

4. The fourth charge is—the trustees failed to hold monthly meetings, as provided by the 8th by-law. If there be any negligence here we are not aware of it; and if any, we are at a loss to see how or in what way the plaintiffs were thereby injured. The bill and proofs both fail to throw any light upon the subject. Neither show in what particular the plaintiffs have been sufferers from this alleged omission of duty. The proof, however, shows the board of trustees met daily, and of course monthly, and so far the averment of the bill in this particular seems to be disproved.

5. The fifth and sixth charges relate to the New York agency and its operations during Ludlow's time as cashier. Here the plaintiffs and their counsel seem to labor under great mistakes as to the organization of the New York office, and the business assigned to it, as well as the duties

of the board of trustees in its supervision; and had the plaintiffs given these matters the proper attention and consideration, at the proper time, it is possible they would have escaped the disasters that have overtaken them.

The New York agency was established in 1838, and placed under the control of a very faithful and competent officer, for specific purposes, and within the competency of the corporation. Upon his fidelity the board of trustees relied, and no personal supervision by the board of trustees over the office was contemplated, nor was it feasible, or even possible. In 1843, the office was examined, and its administration found satisfactory. "Exhibit 117," Bishop's 2d deposition.

In the same year, the board of trustees for the first time prescribe, as far as we know, written instructions for this agency. They will be found in answer 17 in chief, in Bishop's 2d deposition. No other supervision was then deemed advisable or necessary, by a full board, after an experience of more than four years. At that meeting of the board of trustees, the continuation of the agency was deemed expedient and proper, with but one dissenting voice of a full board; the vote standing ten to one. The regulations then ordered were conservative and restrictive, much diminishing the discretionary powers of the agency.

In 1847, after the Gower failure, further limitations were placed upon the office, and its power to deal generally in foreign exchanges was taken away, and never afterward restored. "Exhibit 127," Bishop's 2d deposition.

Again, in 1848, the office is examined, and further restrictions placed upon its administration. "Exhibit 118," Bishop's 2d deposition. Previous to this examination, on September 19, 1848, special instructions were

given to the new cashier, Mr. Coe, for his guidance. "Exhibit 126," Bishop's 2d deposition.

Again, in 1852, like instructions were given to Rockwell, his successor, and Ludlow, his assistant. "Exhibit 126," Bishop's 2d deposition.

And again, on Ludlow's appointment as cashier, the resolutions of February 14, 1855, were passed by the board, announcing deliberately, after the experience of many years, the purposes for which the office was established, and the policy that should govern it, not only in its administration, but also in its supervision. These instructions thus given, after so long an experience, contemplated no personal supervision by the board of trustees, nor any committee from it. The cashier, however, was required to act under the advice and counsel of the trustees resident in New York, in certain matters, and had no authority to embark in the business out of which the plaintiffs' misfortunes arose; and he was specially advised that the great mission of his office was to furnish deposits and means for exchange at the Cincinnati office, and that loans and other things at the New York office were incidental, tributary and auxiliary to this great mission.

In the spring of 1855, the agency is again examined by the President of the Company. "Exhibit 124," Bishop's 2d deposition. No changes upon it made, except to authorize Carr, the teller, to sign checks, and to that extent relieve the cashier.

In 1856 and 1857, the New York trustees, *sua sponte*, examine the condition of the agency. (a) "Exhibit F,"

of the board of trustees in its supervision; and had the plaintiffs given these matters the proper attention and consideration, at the proper time, it is possible they would have escaped the disasters that have overtaken them.

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In 1856 and 1857, the New York trustees, *sua sponte*, examine the condition of the agency.(a) "Exhibit F," Bishop's 2d deposition, is supposed to be the result of examination in 1857, and "Exhibit G," Bishop's 2d deposition, is the report of these trustees in 1856. This

(a) This seems from G not to be so. The examination was at Ludlow's instance, and the report doubtless his work, designed to suppress doubts upon him and give him complete control of the funds in his office not remitted from the Home office. See his letter of 8 May 1858, exhibit Z and for the same purpose

report was taken up and deliberately considered by the board, as we infer from the President's letter of May 15, 1856. "Exhibit P," Bishop's 2d deposition. Though the minutes of the board are silent upon the subject, yet from the letter we understand the instructions of the board of trustees to the officers of the Company were to conform to the recommendations of the report, and we apprehend such, in fact, substantially to have been the case. The vibrations of business casting the exchanges from the Cincinnati office, above and below the standard, according to circumstances.

Thus we find the New York agency organized, thus regulated, and thus supervised. We also find from the beginning it became the fiscal agent of the State of Ohio, and in 1849, 1850, 1851 and 1855, if not before or otherwise, the attention of the Supreme Court was called and directed to this agency by its commissioners, Messrs. Wood, Burchard, Jewett and Hayward. "Exhibits 111, 112, 113, 114, 115," Bishop's 2d deposition. To that of Mr. Jewett, "Exhibit 113," we call the especial attention of the Court, and especially to the extract we have given in Bishop's cross-answer 9, in his 2d deposition, in our abstract of his testimony.

In this connection we may also state, that though the General Assembly of the State of Ohio in the charter of this corporation, sec. 22, reserved to itself supervision over this corporation by a committee from its own body, yet as far we know, no such supervision was ever deemed necessary or advisable, notwithstanding the intimate relations between the fiscal agents of the State and the New York agency, through the entire period of its operations, and so far as we are permitted to draw any conclusions from this,

they certainly are not prejudicial to the board of trustees in its supervision of this agency.

Under this review of the organization of this agency, and the rules and regulations provided for its government and supervision, from time to time, by the board of trustees, we claim, if these charges of the bill be in manner and form properly averred, so as to form the basis of relief in equity, yet they fail to be sustained in any particular by the proofs, and in this aspect of the case demand no further consideration from our hands.

6. The seventh, eighth, ninth, and tenth charges relate to the conduct of the trustees as a board and as individuals, after the failure. Let us see what they are.

The seventh is, that the trustees paid the debts of the Company from its assets after the failure; and this, it is averred, they had no power to do. This as a legal proposition certainly can not be maintained. The trustees had no title to the assets of the corporation. It, alone, was responsible for its debts, and answerable for their payment. The trustees were merely managers of the powers of the corporation, as given and directed by law, and subject to be restrained and controlled as authorized by law. The corporation held its assets and controlled them, and had power to use the same in the payment of its debts, where unrestrained by law. Its assets were subject to be seized by attachment, or execution, or bill in equity, or by proceedings in aid of execution; and when so not seized, the corporation had power to apply the same in payment of its debts, or any part of its debts, without the hindrance of any one; and this power the board of trustees could exercise, in good faith, simply because it was authorized and lawful.

In Ohio, any debtor, where unrestrained by law, may pay one creditor, and not pay another. This The Ohio Life Insurance and Trust Co. could do, as well as any other debtor, and its trustees or board of managers in authorizing it to be done violated no law and committed no wrong.

The eighth charge is, the trustees should have held the assets for equal distribution. This they could not do. They did not hold the assets of the corporation at all; they were held by the corporation, and subject to the ordinary process of law. It is true, they might have caused the corporation to make an assignment; but that would have been not to hold, but to pass to others, the assets of the corporation, to hold in a manner, and for purposes, very different from those for which the corporation held them. In the contingencies under which the board of trustees labored, there was no law that forbid the course they adopted, and none that required them to surrender their control to assignees, or defined their line of duty under the circumstances. If they erred, it was an error of judgment; and that is all there is of it.

The ninth charge is, the trustees, individually, paid their own debts to the Company, by checks purchased from others at a discount. Admit this to be so; what injury does it work to the plaintiffs? None at all. The corporation was controlled by a board of trustees and its officers. The trustees, in its management, individually, had nothing to do. It was only as a board they could act or did act. The trustees, as individuals, stood to the institution just as all other persons did, contracted with it the same way, and dealt with it precisely as others did. Many of them, if you please, were individually indebted

to it at the time of its failure, and all paid their debts, in whole or in part, as others paid theirs; and had they not the right to do it? We think they had. But say they had not, and must account for the difference between the cash value of what they owed, and what they paid; then the question arises, to whom, and for whom, this payment must be made? Must it not be to the corporation or those that represent it?

If there be any rights here against the trustees individually, they do not enure to the plaintiffs, and they form no basis for an action in their behalf. These rights, if they exist, passed, by the deed of assignment of September 26, 1857, to the assignees, and from them under their deed in conformity with the decree of the Superior Court of Cincinnati, to the receivers, and there they now rest, whatever they may be, unless lost by the lapse of time. These plaintiffs have no right, in this aspect of the bill, to invoke the aid of this Court against the defendant trustees, who have paid their debts to the Company by checks upon it, purchased, if you please, at a discount with their own resources, to compel them to account to these plaintiffs for these discounts individually.

And tenth, it is charged,—the suspension in the execution of the assignment from the 16th to 26th Sept., 1857, under the circumstances, was a fraud. We answer, the trustees were not in law compelled to order the assignment to be made. It was a mere matter of discretion, resting in sound judgment and prudence. At best, it was but an error of judgment. But even if it were true, that it was delayed, so that some debts might be paid and others not, *ad interim*, we see no objections to it, because there

was no law against it. There are, then, no grounds for relief made by the bill.

7. It is next averred, the bill is not for the benefit of the plaintiffs alone, but for others also, that will come in and aid in its prosecution. But we have seen the plaintiffs have no right to invoke the aid of this Court, but to adjudicate their own controversies with the defendants. They can not file such a bill in this Court for such a purpose, and therefore so much of the bill as was intended to draw others in to aid in its prosecution, must be regarded as of no force and of no validity.

8. The plaintiffs lastly state they can not use the corporation name, and therefore sue in their own, as it is lawful for them to do. We answer, the chancellor allows such a bill for fraud only, when the cause of action lies in the corporation; but when it has passed from the corporation at the time of the bill, and the corporation itself could not maintain the action, then no stockholder nor creditor can maintain such a bill on behalf of the corporation, or through the corporation for himself, because the corporation has no such cause of action to be enforced.

The plaintiffs' bill was originally filed, if it might so be, to break down the assignment of Sept. 26, 1857; but it was amended, and so much of it withdrawn, and the plaintiffs become parties to the bill then pending in the Superior Court of Cincinnati, and therein a decree was rendered confirming the assignment, and compelling the assignees to make a transfer to the receivers of the Court; and by so doing, they have completely concluded themselves from the further prosecution of their bill, if they were not otherwise fully concluded.

We have thus passed through this bill, and submit,

whether the plaintiffs, by the terms of the bill or by proof, have made a case, that entitles them to the aid of this Court.

III. The proofs before the Court show, we think, very clearly, that the failure of The Ohio Life Insurance and Trust Company flows from the mismanagement of the New York agency by the cashier, without the knowledge or participation of the Cincinnati office or trustees, and without authority; and in this mismanagement, the plaintiffs have participated, unintentionally, perhaps, without proper care. Their dealings with the New York office were unknown to the Cincinnati office or the defendant trustees. It is true, their names appeared in the statements of the New York office, sent to Cincinnati, sometimes on one side and sometimes on the other, as far back as August, 1856; but these operations in exchanges never appeared. Now it seems to us, and we so claim, it was the duty of the plaintiffs to have ascertained Mr. Ludlow's powers to deal with them in the manner he did. His authority was special and powers limited, and they were bound to know it; and having embarked with him in an unauthorized business, from

which a loss has ensued to them, they can not shift that loss from their own shoulders to the shoulders of the managers of this corporation, who had no knowledge of these transactions, and never authorized them.

The extent and exact nature of the operations between the plaintiffs and Mr. Ludlow are not disclosed, but enough is disclosed to show the plaintiffs knew Mr. Ludlow was beyond his sphere. Their account shows that they re-drew in August 1857, largely on Mr. Ludlow, to put themselves in funds to meet his drafts. This is but a shift and device of weak parties, and places the plaintiffs in an unfavorable aspect before the Court.

III. FOR WHAT ARE THE DEFENDANTS LIABLE?

I. The charter says, they shall be liable for losses, that the capital stock shall not be sufficient to satisfy, in the same manner and to the same extent, that other trustees are liable at law and in equity. What does that mean? It means, that they shall be liable in the same manner and to the same extent that like trustees or managers of corporations are liable, and nothing more. They are not trustees holding property in trust, having the title in them, and subject to their supervision and control. They are the mere managers of a corporation, and can exercise only certain defined powers, given by the law organizing the corporation. They receive nothing from the corporation. They hold no es-

tate, and administer no trusts under the law; they exercise certain powers in the mode and manner pointed out by the law that gives the powers, for the well-being of the corporatien and those whose rights and privileges are involved in it.

II. They are not liable for errors of judgment in matters of law, nor in matters of fact. They have to act upon complex cases, and to decide to do this or do that. They may err, and yet be without fault. The authorities, as well as natural reason, answers this point the same way; and losses, that result from such errors, must lie where they fall. We think it unnecessary to dwell upon this point. For such errors or mistakes, and for the misfortunes that flow from them, the trustees are not liable.

III. The managers or trustees of this corporation are liable, if at all, for *mala fides*, bad faith, or such gross neglect as will amount to bad faith; and we mean by gross neglect, "the omission of that care which even inattentive and thoughtless men

never fail to take of their own property." Neglect alone will not fix a liability upon them, unless it be so gross as to amount to bad faith, or be evidence of it. Gross neglect alone is not inconsistent with good faith. They are consistent and may stand together. But neglect may be so gross as to amount to bad faith, or be evidence of it, and, when so, guilt enures and liability attaches.

We do not concede, as a legal proposition, that such trustees are liable for what is termed ordinary neglect, or for the want of ordinary care. Though we claim, from the proofs in the case, it is not shown they have not used ordinary care. But why, we ask, should they be held to a higher responsibility than the purchasers of mercantile paper, as well to those behind them as those before them? To deal in money, exchanges and securities is their business. With those before them over the counter there is a fixed rule of liability to which they must conform in the purchase of bills and payment of checks. Why are they not protected by a like rule against those behind them on the other side of the counter, and for whom they act? We see no reason whatever why they are not, unless it may be because they are stockholders taking care of their own property. If that be so, then the answer is, they take the same care of the property of others, they do of their own. But that a careless, inattentive and thoughtless man does, and for that reason the measure of liability must be the same.

IV. Let us next look into the organization of the board of managers of this corporation, and the powers conferred upon it, and the mode and manner of their exercise, and see if we can not learn from them what liability was intended by law to be fastened upon them. We have already said they derived no power from the corporation. All their powers come from the corporate grant under which the corporation acts and lives. They have no property vested in them, and no interest and no title. They exercise gratuitiously mere naked powers as given by law, and in the mode authorized be law. They are selected by the stockholders from among the stockholders. They are twenty in number, citizens of the United States, and three fourths of them citizens of Ohio. They act entirely in corporate matters as a board, and can not act otherwise. This board, for all ordinary purposes, may consist of any six of the twenty, and for discounts of any four of the twenty, of whom the President of the board must be one.

12 Ohio State Rep. 56.

5 " 59

Now let us stop just here. What is the liability intended by this act of incorporation to be fastened upon these non-resident trustees, five in number? Suppose they never attend a board meeting, as many of them, and we may say all of them, never did. Are they liable? We say not The nature of the organization does not contemplate they should do more than give their advice when sought. Then we turn to the resident trustees, and ask if they have any greater liability fastened upon them than the non-resident trustees? We answer not. The law makes no distinction

between them. And of them, which of the fifteen are to be made liable? Who are bound to attend to ordinary business? Who to discounts? The answer is, any six or any four as the case may be, the President always being one. They act only by a board as an organized body, and the judgment of that board controls the action of the corporation, and can alone control it. The trustees, individually, are nothing and powerless.

But let us proceed. The board of trustees are required to establish agencies in each judicial circuit, but can confer upon them no banking powers. Are these agencies to have the personal supervision of the board, or trustees, or committees from its members; or are they to be governed by rules and regulations adopted by the board for their government and management, and to be placed under the charge of competent and honest men? Do the by-laws, established in the organization of these agencies, contemplate such supervision of the board? Has the Supreme Court of Ohio, in its supervision, intimated the necessity or propriety of such oversight? Has a single commissioner, of the many who have examined into the affairs of this corporation and its administration, under the orders of the Court, ever intimated any change in the organization of these agencies? All these inquiries must be answered in the negative. The charter does not contemplate such a supervision upon the part of the board of trustees, nor does the mode and manner of the working of the corporation admit it. These agencies had their functions, to be performed under the rules and regulations established for the purpose, and deemed adequate for their protection, and all the board could do was to place them under competent officers, to see they acted and lived up

to the duties assigned to them. If, nevertheless, there should be a failure, it would be incidental and unavoidable.

The board of trustees also had power to establish transfer agencies, for stocks and deposits, within and without the State of Ohio. This power they exercised by establishing such an agency in the city of New York, in the organization of the corporation, and in putting it into motion. They adopted rules and regulations for its management and administration, but these rules and regulations contemplate no personal supervision of the board or its members. In fact, it did not admit of it. Yet no change in this respect was ever ordered by the Supreme Court, nor suggested by a single one of its commissioners.

The board of trustees also had power to deal in exchanges. Here the power is broad, and goes around the globe, and as ample as the sovereign State of Ohio can grant it, and requires agencies the full length and breadth of the exchange movements, and to be exercised in all places expedient, where not prohibited. This exchange power could not be exercised without agencies of some sort, and such agencies could not be under the personal supervision of the board, and had to be managed and supervised by rules, regulations and correspondence. Under this exchange power, the agency in New York was established in the year 1838, for the purposes often repeated and emphatically stated by the board, in its resolutions of February 14, 1855. From the nature of the case, no supervision of this agency by the board, or committee from it, was ever contemplated or designed. No, not even were the trustees resident in the city of New York constituted a committee, or had power to supervise and direct the agency. All that was contemplated or designed,

was that the agency should consult with and act under the advice and promptings of such trustees.

The trustees resident in the city of New York could not be constituted into an organized board to manage the agency in that city. The charter did not allow it. All that could be done or required, was to have their advice and counsel in the administration of the agency.

Such was the machinery put in operation by the board of trustees, in the exercise of the powers given to this corporation; and, in the opinion of the commissioner of the Supreme Court, in the year 1851 (Mr. Jewett), confirmed by the Court, this machinery was sufficient, and if not, no improvement could be suggested; and this consideration resolved itself into the propriety of the continuation of the agency for the purposes contemplated.

It was the duty of the board of trustees to elect a president and other officers for the corporation, and define their duties. This they did. The powers of the corporation were to be exercised by the board of trustees and its officers, and not otherwise. Section 8 of the charter. The trustees individually had a right to trust to the fidelity and integrity of the board and the officers of the Company, provided they had selected proper persons as officers, and placed them in position without any knowledge of their infirmities.

What liability can the law attach to an individual trustee of a corporation thus organized and put in operation? We answer, if he acts at all, he must act in good faith, and he must not be so supine and so negligent, as to be chargeable with neglect so gross as to amount to bad faith. He is under no obligation to accept such an office and such a trust, but if he does, then he must perform the duties, the

act contemplates, that is all. The individual liability of these trustees seems to us to be slight, as it evidently was intended it should be, because, as individuals, they have no power; and above all, because it is a great favor to get good men to accept such trusts; and to do so, they must not be held to a responsibility that will deter such men. Their power begins when they come together as a board; if chargeable, it must be for fraudulent acts as a board, and this brings us to that point.

V. What charges are brought against these trustees as an organized body, exercising the powers of this corporation as authorized by law, that this Court can lay its finger upon, and say here this board thus organized has done this act, or that act, for which there is no authority, in bad faith and without due care, and the parties thus acting must respond to the consequences of their acts? We answer, generally, none at all, but let us be particular.

1. It is said they failed to make examinations of the condition of the Company. But who failed? Which board? When and in what? Neither bill nor proofs answer these questions. Let it be observed once for all, the

bill seeks to vindicate the law, and to do that it must point specifically to its broken fragments, and show in what it has been violated, and for what it is to be vindicated.

2. Next, it is said they were grossly negligent in making loans to railroads and others, without adequate security. This was a matter of opinion or judgment. But what loans were so made? By what board, or by what officer? Who did these wicked things? When, how, where and for what? Neither bill nor proof fixes any stain upon these individual trustees in any of these respects. No board meeting is pointed at as doing these things. No officer's act with the connivance of any board or any trustee is brought to light as the instrument of these supposed wrongs. How, then, are the defendant trustees individually to meet such charges, or the Court to adjudicate upon them?

3. It is next said, dividends were improperly declared without examination, when the capital was greatly impaired. The Court will here observe, this bill is not to reach these funds thus alleged to have been improperly declared and paid to stockholders, but to charge these defendant trustees for improperly and unlawfully making these dividends, without proper examinations. And here again we have no specifications. What dividends were so made? By what board, and who composed it? The bill gives us no information, and the proofs can not respond to the interrogations. In truth, no dividend was ever made without a faithful examination by the finance committee, nor declared except from ascertained profits, reported by that committee, after leaving a reasonable surplus for contingencies.

It will also be observed there is no charge against this committee for making false reports at any time. In point

of fact, the committee attended to the duties, that devolved upon it at all times. It relied upon the reports of the officers, as it had a right to do; and in good faith reported to the board of trustees, who, acting upon such reports, relying upon their correctness, declared the dividends; and in so doing they acted uprightly, in good faith, with due care and are not responsible for any error of judgment in matter of law or fact in making such orders. Indeed, they were bound to act upon the light they had. If profits existed, the charter was imperative and required dividends to be made. They could not be withheld. Sec. 27 of charter.

4. They are charged with negligence in not holding monthly meetings. But where and how were the plaintiffs injured by these omissions, if in point of fact, there were such omissions? The bill is here silent, and the proofs equally so. No, the proofs are not silent. They say the board met daily for business, and of course monthly. This charge, then, broadly made is broadly met, denied and disproved.

5. We next direct the attention of the Court to the fifth and sixth charges of the bill. Those involve the administration of the New York agency, and the rules and regulations for its government and supervision. We have already attempted to show, and claim we have shown, that it was not intended by the charter of this corporation, nor could it be from the condition of things contemplated that the board of trustees, or its members, should personally supervise this agency. The corporation was endowed with full exchange powers, as well as full powers for the reception of money on trusts of any and all kinds, and everywhere unrestrained by local laws, within the State of Ohio,

and without. Sec. 2 of charter. These powers could be exercised only through officers and agencies under a system of rules and regulations devised specially by the board of trustees at discretion, and the usages of business. In the establishment of the New York agency, the board of trustees placed it under the charge of an experienced and competent officer, and from time to time establish such rules and regulations for its government and supervision as experience and observation indicated to be prudent and proper.

In 1855, it became necessary to call a new party to take charge of this agency; the board take up the consideration of the agency, prescribe regulations for its administration and supervision, and place it under the charge and care of an experienced and competent officer, in whom they had entire confidence, from many years experience in the faithful discharge of his duties, and under the presence of those most deeply interested in the welfare of the institution. Exhibits 122, 123, Bishop's second deposition, and his answer to cross-question 33. Resolutions, February 14, 1855. The board also placed the Cincinnati office under the charge of competent and able men, of good reputation, and had established proper rules and regulations for its government and administration. The trustees gave it also a constant daily supervision, and had no cause to doubt the integrity or fidelity of a single officer, agent or trustee, up to the day of suspension.

In the administration of the New York agency, under Mr. Ludlow, and perhaps Mr. Rockwell, the board of trustees was overreached, notwithstanding a higher supervision was exercised in Mr. Ludlow's time by the New York trustees, *sua sponte*, than had been exercised over

any of his predecessors. The policy and practice of the board and usages of business had been the same for years —to keep the means accumulated at the New York agency employed in exchanges, as far as could be with safety, and not to make it a loan office, except incidentally. This policy was well known to the agency, in fact, and constructively to the plaintiffs, and all others who had dealings with it. They were in duty bound to look into its mode of operations and its daily movements, and from them understand its workings and its safety. Had the New York cashier fostered this policy, all, doubtless, would have been well. But he did not. He embarked in enterprises on his own account, forbidden, and used the means, resources and credits of the corporation in ways unauthorized and unknown to the trustees, and the rest of mankind generally, and involved the company in ruin. For this the trustees, individually or as a board, are not responsible, if we have anything like a correct conception of their powers, duties, obligations and acts.

The trustees, as individuals or as a board, had no knowledge of Mr. Ludlow's transactions as developed after the suspension. They even had no knowledge of his transactions with the plaintiffs or with James Lee & Co., as is abundantly shown by Mr. Stetson's letter of June 29, 1857. "Exhibit B," Bishop's second deposition. By false reports, and by one device and another, Mr. Ludlow kept concealed from the board, and even from the New York trustees, the dangers that surrounded the Company through his administration. His reports excited no suspicion and letters awakened no alarm. His call loans in New York were not exaggerated. They were supposed to be made under the advice and approval of the New York

trustees, or some one of them. The exchanges between the two offices were also kept within reasonable bounds. Both accounts not higher than they had been for years, and nothing in them to excite alarm or apprehension at the Cincinnati office, or of the trustees in New York. This is fully manifest from the action of the Cincinnati office, and from the act of Mr. Coe, a New York trustee, who, as cashier of the American Exchange Bank, of New York, permitted Mr. Ludlow to overdraw his account to the amount of $750,000, a sum at the time beyond the entire exchange account of the Cincinnati office, which was $511,764 03.

It is quite true at times Mr. Ludlow begged for aid from the Cincinnati office lustily. But that office, not knowing his condition, and looking at the course of exchanges between the two offices, the policy of these exchanges, his resources and facilities, left him in the center of the money circle to temporarily relieve himself, as is clearly indicated by Mr. Stetson's letter of June 29, 1857, above referred to, not supposing for one moment that Mr. Ludlow had used up all these resources and pushed the credit of the company to extremes by operations unknown and unauthorized.

These operations of Mr. Ludlow in borrowing money, pledging the securities of the Company and others under his control, dealing in stocks, loaning money, receiving deposits, and dealing in exchanges with plaintiffs and others as charged in their bill, in manner and form as therein stated, were wholly unknown to and unauthorized by the trustees individually or as a board, or to the officers at Cincinnati, and uncalled for by the usages, policy or practices of the Cincinnati office or the board of trustees.

The rules and regulations established by the board of trustees for the government and supervision of the agency in Mr. Ludlow's time, were not disregarded by the board of trustees, nor by the officers of the Cincinnati office, as is evident from Mr. Stetson's letter of June 5, 1857, "Exhibit D," Bishop's 2d deposition. Here he is notified his report is behind and it may be called for. So, too, the complaints of the Branches of the State Bank of Ohio are not overlooked, but receive attention and the causes of complaint removed. So, too, the cautious report of the New York trustees, of May 1, 1856, "Exhibit G," Bishop's 2d deposition, is not regarded, but considered as appears from Mr. Stetson's letter of May 15, 1856, "Exhibit P," Bishop's 2d deposition. That report looked to curtailing the exchanges between the two offices, as the means of safety, and not the loans at the agency. This was not the policy of the board but the reverse. Its policy was to keep up exchanges between the two offices as high as might be reasonably proper and make loans at the agency in subordination to that policy. But after that report the exchanges were not pushed beyond points deemed safe and prudent for years, and certainly were not so at the time of the suspension, being then below $520,000, while the assets of the Cincinnati office at the agency exceeded $800,000. They were Aug. 17, 1857, $652,895.26, and Aug. 24, 1857, $511,764.03.

Balances were July 1, 1857, $882,506.70; Aug. 17, '57, $652,895.26; Aug. 24, '57, $511,764.03.

But it is said the 20 years' certificates were taken up by the agency, and money had to be borrowed for that purpose from time to time. That may be true temporarily, but not otherwise. These certificates when taken up, were returned to Cincinnati and charged up; they were in the banking department charged to the trust department; and

in the Company's report of December, 1856, to the Supreme Court these certificates are dropped. So that we see the intimation by Mr. Ludlow, in his deposition (answers 88, 89, etc.), is *suggestio falsi*, totally unwarranted; yet such is the testimony brought forward by the other side to blast the reputation of the defendant trustees and to support their action.

We are also pointed to the loans to the Marietta and Cincinnati Railroad Company, as disclosed by Mr. Ludlow in his deposition (answer 81, etc.) Yet when we turn to the letter authorizing these loans, from Mr. Stetson to Mr. Wilson, of Oct. 31, 1855 (Exhibit T, Bishop's 2d deposition), we find Mr. Ludlow simply mistaken, and what he states untrue.

We are also pointed to the letter to James Lee & Co., of Dec. 19, 1856, twice exhibited to the attention of the Court, as of great importance: Exhibit A, Lee's deposition; Exhibit C, Bishop's 2d deposition. Yet that letter the plaintiffs never saw and never acted under it; nor did Mr. Ludlow ever see it or act under it. That letter was strictly confidential, and Mr. Stetson when he gave it, and those with whom he consulted well knew what were Mr. Ludlow's powers, and believing in his integrity and fidelity, they might very properly say the Company would be responsible for all his acts. It was an honest expression of confidence in Mr. Ludlow, that Mr. Stetson was bound to give Mr. Lee, and yet honorable gentlemen point to it, as a mark of corruption or improvidence upon the part of the defendant trustees. Alas! how prone we are to censure others.

But look at these charges in the bill, how vague, how general, how easy to make, and how difficult to answer and

meet. Then, too, look at the testimony taken to establish them, and the mode and manner of taking it. Mr. Ludlow, the witness, the man that has done all this mischief and brought us all to shame, every question leading, notice given to take his testimony in one place, and it is taken at another; like master, like man, the parties have had their witness entirely to themselves, have taken his testimony to suit themselves, and we leave them to enjoy the fruits of their labors, trusting the Court will fully appreciate the purposes of client, lawyer and witness, and "render unto Cæsar, that which is Cæsar's."

6. We are next called to examine under this head, the seventh, eighth, ninth and tenth charges of this bill. We have already adverted to these charges, and as matter of law asserted the board of trustees had power to do what they did in every particular. We now claim it was their duty to do what they did. They did not know the extent of the mischief accomplished, and hoped and believed the corporation with its franchises could be saved, and to that end worked and labored and directed their efforts. The wreckers were upon them, and on all sides they were beset by parties of all colors and all conditions, and with all sorts and modes of redress and petition; from the haughty money changer, with the law officers at his heels, to the humble negro, with his simple appeal for his pittance. Under these emergencies they had to act, and act quickly. This they did, and did honestly and fearlessly. And we say they did right, though they may have erred. We ask no squinting or cringing or whitewashing from the chancellor or any one to vindicate or justify these gentlemen in what they did. The deed is done. It stands as history. They exercised a sound discretion honestly, and in the

main did well; and if it so be any partial evil has resulted inadvertently, it was unavoidable in the course of human events, and that is all there is in it. We claim as matter of law and matter of fact, the plaintiffs have no cause to complain of the acts of these trustees individually, or as a board, from the time of the suspension to the time of the assignment. They acted lawfully, rightfully and properly in the exercise of the powers the law gave them, and so we doubt not the Court will find.

We may now ask, for what are these defendant trustees liable to the plaintiffs? They were mere trustees of powers given by law for a corporation. These powers they reasonably exercised, according to human ability, in the modes and in the ways contemplated by the grants under which they acted. With the plaintiffs, they had no privity whatever, and assumed the powers they exercised at the instance and call of far different parties. They have acted in good faith, to the best of their judgment, without reward, and are not chargeable with ordinary, much less with gross neglect. And if such be the fact, and so we hope and believe the Court must find, then they have come under no liability to any one; and we thus pass from this branch of the case.

IV.—DOES THE EVIDENCE FASTEN A LIABILITY ON THE TRUSTEES?

I. We have attempted to show the plaintiffs have not made a case that entitles them to any *status* in this Court against the defendant trustees. They are chargeable by law with notice of the powers

23 How. Rep. 398.

given these trustees under the grant to the corporation, and of the powers given to the New York agency under the grant from the corporation. They are also chargeable with notice of the duties assumed by the trustees, and the care and attention they are bound to exercise in the discharge of these duties. We have also attempted to show, and claim it as a legal proposition, that if Mr. Ludlow has departed from his powers, and gone into enterprises unauthorized, and the plaintiffs have participated in these enterprises, and thereby aided Mr. Ludlow in other unauthorized acts, from which the loss complained of has arisen, then they are *in pari delicto* with Mr. Ludlow, and entitled to no favor or consideration in this Court. 5 Ohio State Rep. 64, 65.

23 How. Rep. 398.

We now turn to the evidence to see how the parties stand, and what are the facts.

1. We find that the agency in New York, after the Gower failure, in 1847, was forbidden to deal in sterling or other foreign exchanges, so as to charge the Company as indorser or otherwise, except as directly authorized by the board of trustees. Of this there is no doubt whatever.

2. We find that Mr. Ludlow, by the resolutions of February 14, 1855, for his government, had no power given him to deal in such exchanges. These resolutions are silent upon such exchanges, and from such silence he had no right to suppose he could embark in such exchanges, as these resolutions were declaratory of his powers, and the mode and manner of their exercise. But if subject to be construed simply as modifications of the rules gov-

erning the agency, then they left the limitations upon the powers of his predecessors in full force, for his government and guidance.

3. The dealings of the plaintiffs with Mr. Ludlow, at the New York agency, were unknown at the Cincinnati office and to the defendant trustees, until after the suspension. Of this there is no doubt. It is true "Bell & Grant, London," appeared in his statements, sometimes as debtors, others as creditors, as far back as August, 1856; but this excited no attention nor criticism, and seemed to have been taken as a collection account. The exchange operations, out of which the plaintiffs' claim grew, were entirely unknown to the trustees or officers at Cincinnati; so says Mr. Bishop (answer 11, on cross-examination, 2d deposition), and such we claim to be the fact.

4. The indebtedness to Bell & Grant, the plaintiffs, flowing from these transactions, and which has passed into judgment against The Ohio Life Insurance and Trust Company by default, arose upon the last eleven bills drawn by Ludlow, on and after August 10, 1857, and subsequent transactions, without the authority or knowledge of the Cincinnati office, or the board of trustees. Of this there is no doubt.

5. It is equally clear, as we shall attempt to show hereafter, that the losses of the Company are attributable, not to the authorized, but unauthorized acts of Mr. Ludlow in the administration of his agency, and in which the plaintiffs have participated as above shown, and of which the defendant trustees had no knowledge whatever.

If these facts be established, then, we claim the plaintiffs have no right to ask this Court to fasten a liability upon the defendant trustees for injuries, to which they have

contributed and aided Mr. Ludlow to inflict upon all the parties. Such is not the province of this Court, and in the administration of justice it gives no relief to a party that occupies such a position.

II. We are next to show from the evidence that the misfortunes of the Company are not to be attributed to the authorized acts of the agency in New York, nor to the acts of the Cincinnati office, under the eye and supervision of the board of trustees, but to the unauthorized acts of Mr. Ludlow, cashier, having the control of the New York agency, without the knowledge of the defendant trustees.

1. The agency was established to attract deposits, to enable the Company at Cincinnati to handle and use them in exchanges, and incidentally and temporarily, it was to use them as far as prudent in loans. This, the testimony of Messrs. Coe and Bishop establishes, as well as the transactions between the two offices, from the beginning to the close. The resolutions of February 14, 1855, placed this fact fully and fairly before the New York agency, and all who dealt with it, as they had a right to know, and are chargeable with knowing.

2. The authorized acts of the New York agency, aside from its transfer power in stocks, were the reception of

money deposits, collection paper and exchanges, so as to produce cash means; and to secure them, and their retention, interest was allowed, and facilities extended by advances and moderate loans, so as not to interfere with the exchange movements between the two offices, that these means were to foster and feed. As an incident to these operations necessarily followed bank accounts in New York, Boston, Philadelphia, etc., and the consequences flowing from such accounts, as well as temporary borrowing and lending, as circumstances and contingencies from day to day might indicate and require. All these are mere sequences of the business into which the Company embarked in the establishment of this agency.

3. This business had been thus conducted for many years successfully, and the agency in New York had really become an institution, not only in New York, but in the country, and of great value to the State of Ohio, and her interests.

4. Had the agency, during Mr. Ludlow's time, confined its operations to the business indicated by the resolutions of February 14, 1855, and the previous policy of the office, all would have been well, and we should never have heard of the disasters that have befallen the Company.

5. The exchange business with the Cincinnati office had not increased during his time. It was kept down, with the fluctuations incident to such business to the ordinary standard, and at all times the Cincinnati office had in the agency more assets than it drew out. Of this there is no dispute. At the time of the suspension its assets exceeded its drafts more than $200,000; and the advance alone from the American Exchange Bank (one of the Company's deposit banks in New York), exceeded its over drafts, so, that it is

thus clear beyond peradventure, that the over drafts from Cincinnati did not create the necessity to borrow as stated by Mr. Ludlow, nor produce the failure of the Company. Had the agency in New York been otherwise properly administered as authorized, these over drafts never could or would have put the Company in danger.

6. The advances to correspondents, as authorized by the resolutions of February 14, 1855, were so guarded that no danger could flow from that quarter. This also is equally clear, as the large cash balances of correspondents at the time of the failure abundantly show.

7. The agency of the Company for the State of Ohio, and the aid from time to time given to the State, though unprofitable directly, was no cause of danger, nor means of weakness. On the contrary, it was considered no mean auxiliary, and a moral indorser of the good government and management of an institution, the State had put in operation. This is equally clear.

8. The exchange and collection business authorized was felicitous and contributed in nowise to harrass or destroy the agency. It was, to a large extent, its life's blood, and had it not been abused by the New York cashier, it could but have been productive of great good to the Company, the country and the agency.

9. The loan business, as authorized in the agency, if kept within the prudential limits prescribed by the resolutions of February 14, 1855, never could have led to embarrassment or trouble.

The proper and healthy exercise of the powers conferred upon the agency, with its stock and transfer agencies unabused, could but have been productive of good and answered the ends intended, and the destruction of the

agency and the company is not to be attributed to the proper exercise of any of these powers.

10. But it is said special things were authorized or permissively done, that led to these disasters. What are they? We will note some of them, and may say the answer to one is the answer to all. Some we have already noticed, but will again simply advert to them.

First. There are the loans to the Cleveland and Pittsburg Railroad Company. These loans were entirely unknown to the defendant trustees and wholly unauthorized, and even not sanctioned by the New York trustees. Mr. Ludlow says they were the sequence of the advance to Gilbert & Johnson. That may be true in one sense, they followed after it, but did not flow from it. They were in no wise connected with it, nor authorized by it. The Gilbert & Johnson advance was pressed upon the Cincinnati office, and after being twice declined, if we recollect the testimony correctly, it was referred to the New York trustees to arrange and manage as they might deem advisable. Bishop's answers in chief, 105, 106, 107, 108, 109, 110, 111 of his second deposition. No act of the board of trustees manifests more care or more prudence than this, and so far as we know, the Gilbert & Johnson arrangement was a happy one, and had no connection whatever with the after operations between Mr. Ludlow and that railroad company, that proved so disastrous alike to that company and the agency in New York. This specialty does not then reflect upon the defendant trustees nor the board. It was not authorized nor was it permitted.

Second. There is the loan to the Marietta and Cincinnati Railroad Company. That we have explained. Here

the board of trustees acted with marked propriety, authorizing the loan only upon terms and conditions that, if followed by the New York cashier, never could have proved disastrous. The board of trutees need no vindication other than the letter of October 31, 1855, to Mr. Wilson. "Exhibit T," Bishop's second deposition.

Third. The operations with James Lee & Co. are also noted as objectionable, and these were known to the board of trustees. These we have already sufficiently explained. If they had been kept within the bounds of Mr. Ludlow's authority to act, they never could have been disastrous to the Company. This firm was supposed to control large means through its Scotch connections, and desired to keep an account with the agency, and to that end the letter of December 19, 1856, was evidently given, and not to invite improvidence on the part of that firm, nor to give any authority to the agency it did not then possess. The Cincinnati office had no knowledge whatever of the operations between that firm and Mr. Ludlow, after that letter and before the suspension, as fully appears from Mr. Stetson's letter of June 29, 1857. "Exhibit B," Bishop's second deposition.

Fourth. We are also pointed to Mr. Ludlow's stock operations. But these were not known to the trustees, nor were they upon the account of the Company. The matter between him and Mr. Bayard is no vindication of Mr. Ludlow, nor was he warranted from what he says Mr. Bayard said to him, in using the means of the Company to bolster up his stock speculations. We look upon the introduction of this matter, and the use made of it in the case, as alike disreputable to the plaintiffs and Mr. Ludlow. Pray what knowledge had the defendant trustees of this

matter? None whatever. What had they to do with it? Nothing at all. Why, then, is it brought forward? Is it to show negligence? How, pray? We must wait to be told. Mr. Bayard may have erred, but we do not believe it. If such conversation ever took place, which we doubt, Mr. Ludlow has misapplied what Mr. Bayard advised, by thus attempting to implicate him in his operations. There was nothing in Mr. Ludlow's stock operations disclosed to the board or trustees calculated to awaken suspicion or alarm. His movements were to a very large extent covered and concealed under the names of others, and unauthorized, and known only to himself and his confederates and brokers. His patent operations give no cause of alarm whatever, and probably were not even disastrous to him. It was his hidden transactions, that have not, and never will be disclosed, that worked the mischief, and for them these defendant trustees are not to be held responsible.

Fifth. We are next pointed to the loans on railroad stocks and bonds, and to the employees of the agency, and some of long standing and upon inadequate security. Well, what of all this? At the time the loans were made, the securities were doubtless all good. They were supposed to be made by the agency with the approval of some one of the New York trustees at least, and continued with their approbation. This, the defendant trustees doubtless believed, and it was proper, just and right, they should not interfere with transactions placed under their charge, and believed to be made with their sanction, and kept up and continued under their permission. They rightfully trusted in the cashier acting as they believed under the advice and consent of the New York trustees.

Sixth. But says the other side, how did the defendant

trustees know that securities were held by the New York agency, or that the New York trustees approved its loans? The witness well answers,—by the reports of the cashier. Upon them they had a right to rely, as much so, as the plaintiffs did, when they accepted and paid his bills. Both and all believed him honest. Had either knew or suspected the cashier as he has turned up, the one would not have trusted his reports, nor the other accepted and paid his bills. A like calamity under like circumstances, has fallen upon both parties.

Seventh. We are next told of the shattered credit of the Company, from Mr. Ludlow's transactions in New York. For six months before the failure, he says its credit was bad; and Mr. Robbins and a few prudent, cautious, suspicious men like him had their doubts and fears, and would not loan the cashier, because they did not like his mode and manner of business, and did not think such an institution should be a borrower of money in that way. But of all this the defendant trustees had no advice whatever. The large banks and bankers in New York were alike ignorant. So were James Lee & Co. So were all the correspondents and fiduciaries of the agency. So the State of Ohio, with the watchful oversight of political parties, and so, too, the plaintiffs. If all these could be deceived and overreached, why is it that the defendant trustees are to be held to know and foresee what others equally sagacious and equally interested did not and could not? We answer, they are not to be so held.

Eighth. We are also pointed to Mr. Ludlow's borrowing and hypothecation of collaterals and securities. But these were not known to any but Mr. Ludlow, his brokers and lenders. The trustees had no knowledge of these tran-

sactions. The correspondents of the agency had no knowledge of them. The plaintiffs, we presume, had no such knowledge. These matters Mr. Ludlow carefully kept from all those most interested in knowing them. The proceeds of these loans were not needed and could not have been used to protect the exchange business between the agency and the Cincinnati office; as we see the correspondents of the agency had at the time of the suspension cash balances more than sufficient to cover these exchanges, and the ebbs and flows of these balances we know ordinarily vary but little; and when they vibrate to a large extent, it is but for a little while, and they soon regain their ordinary level. The loan account of the agency as reported, also needed no such protection. It was subject to short call, or should have been, and subsided and rose, as the deposit account ebbed and flowed. The retiring of the 20 years' certificates in 1854, 1855 and 1856, occasioned no embarrassment to the agency, as they were charged up at once to the Cincinnati office.

This borrowing, then, was not for the legitimate business authorized by the board of trustees, but was induced by the abuses of Mr. Ludlow wholly unknown to the defendant trustees. We therefore claim the disasters to the Company, and the misfortunes that have overtaken all of us, plaintiffs and defendants, are to be set down and attributed to the unauthorized acts of Mr. Ludlow, in the short space of two years, and perhaps of a very few months or weeks before the final blow-up.

III. We next call the attention of the Court to the condition of the Company at Cincinnati, at the time of the suspension. It will be found from Mr. Bishop's cross answers, 27, 28, 29, 30, 31, 32, in his 2d deposition. It was perfectly sound, well and satisfactorily administered, under the supervision of the board of trustees. It had a large deposit account in both departments, and was in good credit at home and abroad. It had means enough to pay all its liabilities, debts and stock, and a surplus. This is the opinion of Mr. Bishop, one well experienced in its affairs, and fully competent to judge of what he speaks. He says if the New York agency could have paid its debts, the Company would have had for its stockholders, after paying all other liabilities, $2,171,092.29, of sound assets. There is, we apprehend, no question about the soundness of the Cincinnati departments, and we may pass from them without further comment.

It is true they were under the eye of the board of trustees, who gave them their constant daily watchful care. Some of them were ever present, watching over the affairs of the Company, and giving them their careful attention and anxious consideration. Indeed, nothing more could have been expected from them, and those that did not or could not attend, from causes and circumstances peculiar to themselves, rightfully and properly confided in them, and the result demonstrates the correctness of their confidence. So far, then, there is, there can be no blame attached to the trustees at Cincinnati, acting as a board.

IV. We now turn to the New York agency as found at the time of the suspension, and what a wreck do we find? Accounts are confused and wholly unreliable; assets squandered; collection paper gone; securities of every kind missing; boxes broken open; bankruptcy triumphant and disgrace complete. No commercial failure ever surpassed it. The appalling task was undertaken by the astounded trustees to ferret out the disasters, hoping, day by day, that the ruin would not be complete. They worked and toiled, examined and re-examined the sickening mass of confusion, and though many knots were untied, and many tangles unraveled, yet a vast mass was left, and doubtless will remain forever, unexplained. Mystery and darkness hang over the ruins, and so will hang until oblivion passes over them all.

Mr. Bishop, in his cross-answers from 37 to 48, inclusive, in his 2d deposition, gives the condition of the New York agency as he found it after the suspension and assignment. The errors detected were not by tens, nor twenties, nor by hundreds, nor tens of hundreds, nor by thousands, nor tens of thousands, but hundreds of thousands. Many debtor accounts were found to be wholly incorrect, and assumed by Mr. Ludlow, and many remain unexplained, unintelligible, and unreliable.

V. We are now prepared to ask and answer the question propounded in our fourth subdivision—Does the evidence fasten any liability upon the defendant trustees? We answer it does not. The plaintiffs have not shown they were without fault, nor have they shown their losses resulted from the bad faith or gross negligence of the defendant trustees, but from the willful frauds and bad management of the Cashier in New York, without their knowledge, without their privity, against all the guards they had placed around him, and in violation of all the rules and regulations prescribed for the protection of his agency, and which had been found adequate under the administration of his predecessors.

It is true the trustees confided in Mr. Ludlow. They had a right to do so. He had long been in their employ, and was believed to be capable, efficient, active, honest, and faithful. He was well recommended, and his appointment gave entire satisfaction to all interested, and they had no cause to apprehend evil at his hands, and ever looked upon him, up to the day of the failure, with confidence and trust, never doubting for a moment, his ability, his integrity, or his fidelity. And so, too, did the plaintiffs; and we ask, then, why should they complain of our infirmities when not greater than their own?

VI. Here we should leave the case, but a passing word seems necessary and proper on behalf of the individual trustees severally.

1. Mr. John C. Wright. He is no more. There is nothing left to us but his reputation, and who that lives would tarnish it? None that knew him can say he was faithless to any trust reposed in him, or that he was a careless and negligent man. His known character for uprightness and integrity, his great endowments and enlarged acquirements, vindicate his memory from the charges of this bill; and for him we can say and will say no more.

2. Mr. Samuel Forrer. He still lives, with a character without a stain, and a reputation unblemished. He had always been a trustee and a friend of the Company; and though a citizen of Ohio, he was not a resident of Cincinnati, and did not take any active part in the general and ordinary business of the Company. Certainly, we must say no blame can be attached to him.

3. Mr. George Luckey. He, while a resident of Cincinnati, gave the Company his constant attention. He was always a trustee like Mr. Forrer, but for more than twenty years he had lived in the suburbs of the city, and had not give them so much attention. Yet he always remained on the finance committee, and half yearly looked into the affairs of the Company, and reported to the board of trustees upon the propriety of dividends, and performed his duties faithfully and well. He is a gentleman advanced in years, of enlarged commercial and banking intelligence, prudent, careful and fully entitled to the confidence reposed in him by the stockholders and board of trustees; and it will not do upon slight grounds to charge, much less con-

vict him of infidelity or negligence in the performance of any duty; and as to him, we trust, the charges of this bill will fall harmless at his feet.

4. Mr. Nathaniel Wright. We have all known him as a man and a lawyer, careful, prudent and eminently trustworthy. When he is no more, it will be well for most of us to say, would that we had lived as he did. For many years he has been deaf, and unable to hear ordinary conversation. He also, many years since, was compelled to abandon his profession in consequence of an affection of the brain. In 1853, he was invited to take a place in the board, and took it with distrust, under an assurance he could not give the affairs of the Company that attention its interests might require. His scruples were overcome, and he entered upon the duties of his office. Occasionally he attended the board meetings, and gave his counsel and advice, to the best of his ability, with an honest purpose to do what he could to preserve, if not add to the high character and reputation of the institution, never distrusting a single officer, or having his suspicions in the least aroused. It will be difficult, very difficult, we apprehend, to make this Court, or any man to whom he is known, believe he was ever faithless to any trust reposed in him, and we leave him without fear in the hands of the Court.

5. Messrs. Taylor and Fosdick. They had long been trustees, and gave the Company their constant attention. More faithful they could not have been, nor more anxious to promote its welfare, and happy should be the man, who has a trust to repose, if he can find their like to take it. If you charge them, it must be for their fidelity and inability in not being able to prevent what they could not

foresee or guard against. We leave them with full confidence to the tender mercies of the Court.

6. Mr. Charles Stetson. He had long been a trustee, and for many years the President of the Company, a gentleman of enlarged commercial experience, and well qualified to fulfill the trusts reposed in him. As far as we can see he was attentive, vigilant and watchful. It is true he over-drew his account without the knowledge of the board of trustees, or any of them, but from that act the Company sustained no loss, and it forms no cause for relief in this action, and before you condemn him for that, it will be well for you to consider what cause the plaintiffs have to complain. We apprehend no danger to him in the present action, and leave him with the Court.

7. The other gentlemen may be taken together, as they need no special notice. They have been faithful and honest. Some of them young, and most of them comparatively new members, and not being reformers, probably in their time, saw no occasion to change or disturb the apparent fixed modes of working the institution. They are all gentlemen of good reputation, capable and trustworthy, and qualified for the positions to which they were called. So far as we know or can see, from the testimony, they are not chargeable with bad faith or gross neglect in the discharge of their duties, and seem to have given the affairs of the Company as much of their attention, as the duties of their position required, and we cheerfully leave them with the Court.